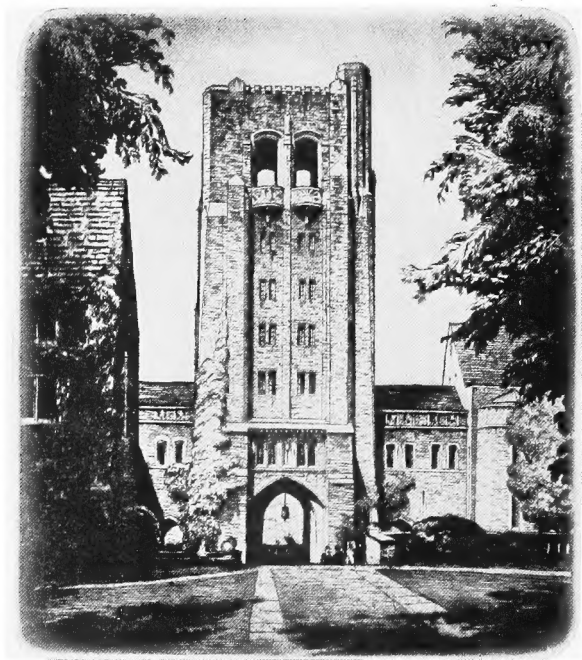


KD
7309
B96
1869



Cornell Law School Library

Cornell University Library

KD 7309.B96 1869

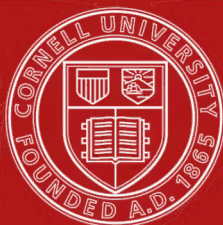
v.3A

Burn's Justice of the peace and parish o



3 1924 021 871 151

law



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

M10656

VI. Injuries to Corn, Trees, and Vegetable Productions.

6. Injuries to Corn, Trees, etc.

By sect. 16, whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain, or pulse or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, whosoever the same may be growing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire to crops of corn, etc.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

Where the defendant set fire to a summer-house in a wood, and the fire was thence communicated to the wood itself, he was rightly convicted on an indictment for setting fire to the wood. (*Reg. v. Price*, 9 C. & P. 729.)

Setting fire to a wood.

An indictment for setting fire to a certain wood, to wit, twenty yards square of wood, is bad; for proof of setting fire to a single tree would support it. (*Reg. v. Davy*, 1 Cox, C. C. 60.)

Indictment.

By sect. 17, whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any steer of wood or bark, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire to stacks of corn, etc.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

A stack of coal-seed, straw, and wheat stubble or haulm mixed is not a stack of straw (*R. v. Tottenham*, 1 Moo. C. C. 461; 7 C. & P. 237); neither is a stack of stubble (*R. v. Reader*, 4 C. & P. 245); neither is a stack of sedges and rushes (*Reg. v. Baldock*, 2 Cox, C. C. 55); but a stack principally composed of wheat-straw, with stubble on the top to prevent its blowing away, is a stack of straw. (*R. v. Newhill*, 1 Moo. C. C. 458.)

“Stack of straw.”

The Court will take notice that beans are pulse, and barley corn or grain; and therefore indictments for setting fire to a stack of beans and to a stack of barley were held good. (*R. v. Woodward*, 1 Moo. C. C. 323; *R. v. Swatkins*, 4 C. & P. 548.)

“Stack of pulse, corn, or grain.”

A stack of flax with the seed in it, the jury having found the seed to be grain, was held to be a stack of grain. (*Reg. v. Spencer*, 1 Dears. & B. C. C. 131.)

“Stack of grain.”

A score of faggots, heaped on each other in a temporary loft over a gateway, were held not to be a stack of wood (*R. v. Aris*, 6 C. & P. 348); but it is not necessary to the character of a stack that it should be out of doors. (*Reg. v. Munson*, 2 Cox, C. C. 186.)

“Stack of wood” in a building.

The offence is not local. (*R. v. Woodward*, 1 Moo. C. C. 461.)

Venue.

No intent need be stated. (*R. v. Newill*, 1 Moo. C. C. 458.)

Intent.

By sect. 18, whosoever shall unlawfully and maliciously by any overt

Attempting to set fire to any crops

FOLLOWING
PAGE IS
DAMAGED

BEST IMAGE
AVAILABLE

6. *Injuries to
Corn, Trees,
etc.*

of corn, etc.,
or to any stack
or steer.

act attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned, under such circumstances that if the same were thereby set fire to, the offender would be, under either of such sections, guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

As to the words “under such circumstances,” etc., see sect. 7, *ante*, 772.

As to the attempt, see sect. 8, *ante*, 772.

Destroying hop-
binds.

By sect. 19, whosoever shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously” see sect. 1, *ante*, 768.

Destroying or
damaging trees,
shrubs, etc.,
to the value of
more than £1
growing in a
pleasure ground,
etc.

By sect. 20, whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house (in case the amount of the injury done shall exceed the sum of one pound), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously” see sect. 1, *ante*, 768. See sect. 32 of the 24 & 25 Vict. c. 96, *ante*, 240.

Destroying or
damaging trees,
shrubs, etc.,
of the value to
more than £5
growing else-
where than in a
pleasure ground,
etc.

By sect. 21, whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, growing elsewhere than in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining to or belonging to any dwelling-house (in case the amount of injury done shall exceed the sum of five pounds), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously” see sect. 1, *ante*, 768. See sect. 32 of the 24 & 25 Vict. c. 96, *ante*, 240.

Damaging trees,
whosoever
growing, to the
amount of 1s.

By sect. 22, whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, whosoever the same may be growing, the injury done being to the amount of one shilling at the least, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding three months, or else shall forfeit and pay, over and above the amount of the injury done,

FOLLOWING
PAGE IS
DAMAGED

BEST IMAGE
AVAILABLE

such sum of money, not exceeding five pounds, as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall for such second offence be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve months, as the convicting justice shall see fit; and whosoever, having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the passing of this Act), shall afterwards commit any of the said offences in this section before mentioned, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding 70 years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

6. *Injuries to Corn, Trees, etc.*

Second offence.

Third offence.

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

The offender may be convicted under sections 52, 53, *post*, 791, though the tree, etc., is under the value of one shilling. (See *Reg. v. Dodson*, 9 *Ad. & El.* 704.)

Where value under 1s.

If a tree be not totally destroyed, yet if it be cut or broken so as to be materially injured, that is sufficient to bring the case within the statute. (*Taylor's case*, *R. & R.* 373.)

What a sufficient injury.

It was thought that where trees were excepted in a lease, or the tenant had no right to cut them down, he might be within the Act (see *Mills v. Collett*, 6 *Bing.* 85); and it is now clear that he would be so; see sect. 59, *post*, 794.

By sect. 23, whosoever shall unlawfully and maliciously destroy or damage with intent to destroy, any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Destroying any fruit or vegetable production in a garden.

Second offence.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

See sect. 36 of the 24 & 25 Vict. c. 96, *ante*, 242.

By sect. 24, whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, not being a garden, orchard, or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty shillings as to the justice shall seem meet, and in

Destroying, etc. vegetable productions not growing in gardens, etc.

8. *Injuries to Mines.* default of payment thereof, together with the costs, if ordered, shall be committed as aforesaid for any term not exceeding one month unless payment be sooner made; and whosoever, having been convicted of any such offence either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding six months as the convicting justice shall think fit.

Second offence.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

See sect. 37 of the 24 & 25 Vict. c. 96, *ante*, 242.

VII. Injuries to Fences.

By sect. 25, whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace, for the first offence forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding five pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.

Destroying, etc., any fence, wall, stile, or gate.

Second offence.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

Malice.

Where the prisoner was ferreting rabbits, and had with him a dog, which broke through the hedge, doing damage, it was held there was no malice in the act of damage, as it was done merely in prosecution of the intention to kill rabbits. (*Reg. v. Prestney*, 3 Cox, C. C. 505.)

VIII. Injuries to Mines.

By sect. 26, whosoever shall unlawfully and maliciously set fire to any mine of coal, cannel coal, anthracite, or other mineral fuel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire to a coal mine.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

Property in the mine.

The mine may be laid as the property of the person in possession of or working it, though only as agent. (*Reg. v. Jones*, 2 Moo. C. C. 293; 1 C. & K. 181.)

Attempting to set fire to a mine.

By sect. 27, whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any mine, under such circumstances that if the mine were thereby set fire to, the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at

the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

8. Injuries to Mines.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

As to the words “under such circumstances,” etc., see sect. 7, *ante*, 772.

As to the attempt, see sect. 8, *ante*, 772.

By sect. 28, whosoever shall unlawfully and maliciously cause any water to be conveyed or run into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall, with the like intent, unlawfully and maliciously pull down, fill up, or obstruct, or damage with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft of or belonging to any mine, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping: Provided that this provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working.

Conveying water into a mine, obstructing the shaft, etc.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

The mine may be laid as the property of the person in possession of or working it, though only as agent. (*Reg. v. Jones*, 2 *Moo. C. C.* 293; 1 *C. & K.* 181.)

Property in the mine.

If a workman, under a claim of right by his master, which he believes to be *bonâ fide*, stops an airway, he is not guilty of felony; but it is otherwise if he knows that the act of the master is malicious. (*Reg. v. James*, 8 *C. & P.* 131.)

Workman employed in working the mine.

By sect. 29, whosoever shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or render useless, any steam engine or other engine for sinking, draining, ventilating, or working, or for in anywise assisting in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connection with any such steam or other engine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggonway, or trunk be completed or in an unfinished state, or shall unlawfully and maliciously stop, obstruct, or hinder the working of any such steam or other engine, or of any such appliance or apparatus as aforesaid, with intent thereby to destroy or damage any mine, or to hinder, obstruct, or delay the working thereof, or shall unlawfully and maliciously wholly or partially cut through, sever, break, or unfasten, or damage with intent to destroy or render useless, any rope, chain, or tackle, of whatsoever material the same shall be made, used in any mine, or in or upon any inclined plane, railway, or other way, or other work whatsoever, in anywise belonging or appertaining to, or connected with or employed in any mine or the working or business thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Damaging steam-engines, staiths, waggonways, etc., for working mines.

9. *Injuries to
Sea and
River Banks,
etc.*

What is a
damaging.

"Steam-engine."

"Erection used
in a mine."

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

Wrongfully setting a steam-engine in motion without its proper machinery attached to it, and thereby damaging it and rendering it useless, is within this section. (*Reg. v. Norris*, 9 C. & P. 241.)

Damaging a drum, moved by a steam-engine, but of which it forms no part, is not damaging a steam-engine. (*Reg. v. Whittingham*, 9 C. & P. 234.)

A scaffolding placed across the shaft of a mine for the purpose of working a vein of coal on the level of the scaffolding was held to be an "erection used in conducting the business of a mine." (*Id.*)

So also was a trunk of wood used to convey water to wash the earth from the ore; for the business of a mine includes all that is done about the mine to render the ore marketable. (*Barwell v. The Hundred of Winterstoke*, 14 Q. B. 704.)

IX. Injuries to Sea and River Banks, and to Works on Rivers, Canals, etc.

Destroying any
sea bank or wall
on any canal.

By sect. 30, whosoever shall unlawfully and maliciously break down or cut down or otherwise damage or destroy any sea bank or sea wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be or shall be in danger of being overflowed or damaged, or shall unlawfully and maliciously throw, break, or cut down, level, undermine, or otherwise destroy, any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

Removing the
piles of any sea
bank, etc., or
doing any
damage to ob-
struct the navi-
gation of a river
or canal.

By sect. 31, whosoever shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank or sea wall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or shall unlawfully and maliciously open or draw up any floodgate or sluice, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

X. Injuries to Ponds.**11. Injuries to Bridges, etc.**

By sect. 32, whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Breaking down the dam of a fishery, etc., or mill dam, or poisoning fish.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

The Act applies to cases where the cutting through a dam, etc., is an unlawful act, and not an act done by right, or under a supposed right. (*Mitchell v. Williams*, 11 *M. & W.* 205.)

XI. Injuries to Bridges, Viaducts, and Toll Bars.

By sect. 33, whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct, or aqueduct, over or under which bridge, viaduct, or aqueduct any highway, railway, or canal shall pass, or do any injury with intent and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Injury to a public bridge.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

This clause, by the words “whether over any stream of water or not,” does away with the difficulties raised by the cases of *R. v. Oxfordshire* (1 *B. & Ad.* 289, 297), and *Reg. v. Derbyshire* (2 *Q. B.* 745).

Other cases, as of injury to a public or private bridge, over or under which no highway, etc., passes, to the value of £5, would be within sect. 51, *post*, 791; and, to a less amount, within sect. 52, *post*, 791.

Where there is no highway.

By sect. 34, whosoever shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate or toll bar, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate or toll bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act of Parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, shall be guilty of a misdemeanour.

Destroying a turnpike gate, toll house, etc.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

12. *Injuries to Railway Carriages and Telegraphs.*

Bridges erected by turnpike commissioners.

With respect to damage done to bridges, arches, walls, etc., erected by commissioners of turnpike roads, see 3 Geo. 4, c. 126, s. 121; 4 Geo. 4, c. 26, s. 72; 16 & 17 Vict. c. 46, s. 14; and tit. "*Highway*," "*Turnpike*," Vol. II.

For the punishment of an offence under this section, see sects. 73 and 74, *post*. The Court has power to punish any misdemeanour at common law, with fine and imprisonment. (1 *Chit. Cr. L.* 710.)

XII. Injuries to Railway Carriages and Telegraphs.

Placing wood, etc., on railway with intent to obstruct or overthrow any engine, etc.

By sect. 35, whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

Placing wood, etc., on railway with intent to endanger safety of any person.

By the 24 & 25 Vict. c. 100, s. 32, whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

A railway not yet opened.

A railway completed, but not yet opened for passengers, may be obstructed so as to endanger the safety of the passengers. (*Reg. v. Bradford, Bell*, C. C. 268.)

Malice.

On an indictment under the repealed section (sect. 6) of the 14 & 15 Vict. 19, for maliciously placing a stone upon a railway, with intent to obstruct the carriages travelling thereon, where no motive for the act was shown to exist, the jury were told that it was not necessary that the prisoners should have malice against any one if the act was done mischievously, and with a view to cause an obstruction. (*Reg. v. Upton*, 5 *Cox*, C. C. 298.)

Intent to endanger.

On an indictment under the 14 & 15 Vict. c. 19, s. 7 (now repealed), for maliciously throwing a stone into a railway carriage, with intent to

endanger the safety of any person in it, it was held that the act must be done with intent to do some grievous bodily harm. (*Reg. v. Rooke*, 1 F. & F. 107, per Erle, J., after consulting *Williams*, J.; but see *Russ. on Cr.*, p. 1061, note (q), 4th ed.)

12. *Injuries to Railway Carriages and Telegraphs.*

By the 24 & 25 Vict. c. 100, s. 32, whosoever shall unlawfully and maliciously throw, or cause to fall or strike, at, against, into, or upon any engine, tender, carriage, or truck used upon any railway any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Throwing at any train with intent to endanger safety of any person.

With regard to this section, it should be observed that the words “or in or upon any other engine, tender,” etc., are intended to do away with the difficulty raised in *Reg. v. Court*, 6 Cox, C. C. 202, where it appeared that the stone thrown by the prisoner fell on the tender, upon which no person was at the time, and it was held that there was therefore no offence within the 14 & 15 Vict. c. 19, s. 7.

By sect. 36, whosoever, by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any railway, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Obstructing engines or carriages on railways.

In a case upon the repealed section (sect. 15) of the 3 & 4 Vict. c. 97, as to the meaning of “wilfully do or cause to be done,” it was intimated that the neglect of a driver and stoker to keep a good look out for signals, etc., was not an offence within that section (*Reg. v. Pardenton*, 6 Cox, C. C. 247); but now, by the present section, any wilful omission or neglect is provided against.

“Neglect or omission.”

Also by the 24 & 25 Vict. c. 100, s. 34, whosoever by any unlawful act or by any wilful omission or neglect shall endanger, or cause to be endangered, the safety of any person conveyed, or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Endangering safety of any person by neglect.

As to the punishment of servants of a railway company guilty of misconduct, see 3 & 4 Vict. c. 97, s. 13.

Servants of railway company.

Upon the repealed section (sect. 15) of the 3 & 4 Vict. c. 97, where, as in the last-cited section, there was no mention of any intent, it was held that if the act was wilful, and the effect was to endanger the safety of passengers, no intent to do an injury need be shown. (*Reg. v. Bowray*, 10 Jur. 211; *Reg. v. Holroyd*, 2 M. & Rob. 339.)

Intent.

On an information under a railway Act, where the acts were done by persons employed by the defendant to repair a wall, and it was proved that on one occasion the defendant had told the men to go on, this was held sufficient evidence to warrant the justices in convicting. (*Roberts v. Preston*, 9 C. B. (N. S.) 208.)

Evidence of intent.

By sect. 37, whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire,

Injuries to electric or magnetic telegraphs.

13. *Injuries to Works of Art.*

cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour: Provided that if it shall appear to any justice, on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding ten pounds as to the justice shall seem meet.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

Summary Proceedings.

The summary proceedings may be in England under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93.

Telegraphs.

For general provisions as to telegraphs, see the 26 & 27 Vict. c. 112, tit. "*Telegraphs*," Vol. V.

Attempt to injure such telegraphs.

By sect. 38, whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding section mentioned, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding ten pounds as to the justice shall seem meet.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

As to the "attempts," see sect. 8, *ante*, 772.

XIII. Injuries to Works of Art.

Destroying or damaging works of art in museums, churches, etc., or in public places.

By sect. 39, whosoever shall unlawfully and maliciously destroy or damage any book, manuscript, picture, print, statue, bust, or vase, or any other article or thing kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, which museum, gallery, cabinet, library, or other repository is either at all times or from time to time open for the admission of the public or of any considerable number of persons to view the same, either by the permission of the proprietor thereof or by the payment of money before entering the same, or any picture, statue, monument, or other memorial of the dead, painted glass, or other ornament or work of art, in any church, chapel, meeting house, or other place of Divine worship, or in any building belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or to any university, or college or hall of any university, or to any inn of court, or in any street, square, churchyard, burial ground, public garden or ground, or any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour, and, if a male under the age of sixteen years, with or with-

out whipping; provided that nothing herein contained shall be deemed to affect the right of any person to recover, by action at law, damages for the injury so committed.

14. *Injuries to Cattle and other Animals.*

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

XIV. Injuries to Cattle and other Animals.

By sect. 40, whosoever shall unlawfully and maliciously kill, maim, or wound any cattle shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Killing or maiming cattle.

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

No indictment lies at common law for unlawfully, with force and arms, maiming a horse. (*Ranger's case*, 2 *East*, *P. C.* c. 22, s. 16, p. 1074.)

Maiming a horse at common law.

Horses, mares, and colts (*Paty's case*, 2 *Bl. Rep.* 721; 1 *Leach*, 72; *Mott's case*, 1 *Leach*, 73, note (a)); pigs (*R. v. Chapple*, *R. & R.* 77); asses (*R. v. Whitney*, 1 *Moo. C. C.* 3); were held to be cattle within the 9 *Geo. 1*, c. 22, from which the present section is taken.

What are "cattle."

The word "wound" is contradistinguished from a permanent injury, such as maiming, and a "wounding" need not be of a permanent nature. (*Haywood's case*, 2 *East*, *P. C.* c. 22, s. 20, p. 1076; *R. & R.* 16.)

"Wounding."

Where part of the tongue of a horse was torn off, it was held not to be a "maiming," neither was it a wounding (as was admitted), because no instrument was used. (*Reg. v. Jeans*, 1 *C. & K.* 539.) But pouring acid into the eye of a mare, and so blinding her, was held to be a maiming. (*R. v. Owens*, 1 *Moo. C. C.* 205.)

"Maiming."

Injuring sheep by setting a dog to worry them, is not a maiming or wounding within the statute, though the dog by biting inflict wounds upon them. (*R. v. Hughes*, 2 *C. & P.* 420; but see *Elmsley's case*, 2 *Lew.* 126.)

Setting a dog to bite sheep is not within the statute.

The owners of dogs are now rendered liable in damages for injuries done to sheep by their dogs under the 28 & 29 *Vict. c.* 60.

As to what injuries constitute wounds see also tit. "*Malicious Injuries to the Person*," *ante*, 751.

Setting fire to a building with a cow in it, and thereby burning the cow, is a killing within the statute. (*R. v. Haughton*, 5 *C. & P.* 559.)

"Killing."

The indictment should state the kind of cattle injured, and such statement should be proved. (*R. v. Chalkley*, *R. & R.* 258.)

Indictment.

Other acts of administering poison to cattle are admissible in evidence, in order to show the intent with which the drug is administered. (*R. v. Mogg*, 4 *C. & P.* 364.)

Evidence.

As to cruelly beating or otherwise illtreating any cattle, etc., see 12 & 13 *Vict. c.* 92, and 17 & 18 *Vict. c.* 60, tit. "*Animals*," *Vol. I.*

Cruelty to cattle.

By sect. 41, whosoever shall unlawfully and maliciously kill, maim, or wound any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, shall, on conviction thereof before a justice of the peace, at the discretion of the justice,

Killing or maiming other animals.

15. *Injuries to Vessels, etc.*

Second offence.

either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the amount of injury done, such sum of money not exceeding twenty pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

This clause will include such birds as all sorts of poultry, swans, and pigeons as being subjects of larceny; also such animals as ferrets, etc.; or such birds as parrots, etc., as being usually kept in a state of confinement; or cats, etc., as being kept for some domestic purpose.

XV. Injuries to Vessels, etc.

Setting fire to a ship.

Sect. 42. Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously" see sect. 1, *ante*, 768.

Ships of war.

Ropes, etc., of vessels on the Thames.

London Docks, etc.

Folkestone Harbour.

Misconduct of masters, seamen, etc., "Merchant Shipping Act."

Naval Discipline Act.

"Cast away or destroy."

"Vessel."

There were formerly numerous Acts relating to offences of this description, but they are now, with some exceptions, the chief of which are here mentioned, repealed. By the 12 Geo. 3, c. 24, which relates to the king's ships of war, persons wilfully setting on fire, or otherwise destroying ships etc., are guilty of felony. The 2 & 3 Vict. c. 47, s. 27, provides for damaging of ropes, etc., of vessels in or near the Thames. The 39 Geo. 3, c. 69, s. 4, provides for the punishment of persons maliciously destroying work, docks, vessels, etc., in the port of London; and sect. 105 imposes a fine not exceeding £10 for destroying any rope, etc., by which vessels are moored in the Thames between London Bridge and the mouth of the river Lea. The 47 Geo. 3, sess. 2, c. 2, s. 57, relates to damaging, etc., of shipping or goods, etc., in Folkestone harbour.

By the "Merchant Shipping Act," 17 & 18 Vict. c. 104, s. 239, masters, seamen, or apprentices by any misconduct or neglect damaging, etc., any ship, or endangering the ship or the life or limb of any person on board, are guilty of a misdemeanour. And sect. 366 is a similar provision applying to pilots.

The 27 & 28 Vict. c. 19, the "Naval Discipline Act, 1834," s. 30, provides a penalty for burning any magazine or vessel not belonging to an enemy. And see also 29 & 30 Vict. c. 109, s. 34, the "Naval Discipline Act, 1866."

The words "cast away or destroy" have received a construction under the 4 Geo. 1, c. 12, and 11 Geo. 1, c. 33, from which it appears that if a ship is only run aground or stranded upon a rock, and is afterwards got off in a condition capable of being easily refitted, she cannot be said to be cast away or destroyed. (*De Londo's case*, 2 East, P. C. c. 22, s. 42, p. 1098.)

It has been doubted whether a small pleasure-boat, a barge and a lighter, are within the meaning of the word "vessel." (*R. v. Bowyer*,

4 C. & P. 559; *R. v. Smith*, 4 C. & P. 569; *Benyon v. Cresswell*, 12 Q. B. 899; *Morewood v. Pollock*, 1 E. & B. 743.)

A part owner may be guilty of the offence of setting fire to a ship. (*R. v. Philp*, 1 Moo. C. C. 263; *Reg. v. Wallace*, C. & Mar. 200.)

By sect. 43, whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

15. *Injuries to Vessels, etc.*

Part owner.

Setting fire to ships to prejudice the owner or underwriters.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

It was held, upon objection that no evidence was admissible as to policies on goods effected by the prisoners, where no goods were put on board, that the words in the statute, “shall underwrite any policy of insurance upon any goods on board the same,” were a mere description of the policy of insurance. (*Reg. v. Wallace*, 2 Moo. C. C. 200; C. & M. 200.)

Evidence.
“Goods on board the same.”

By sect. 44, whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to, cast away, or destroy any ship or vessel, under such circumstances that if the ship or vessel were thereby set fire to, cast away, or destroyed, the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Attempting to set fire to a vessel.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

As to the “attempt,” see sect. 8, *ante*, 772.

As to the words “under such circumstances,” etc., see sect. 7, *ante*, 771.

By sect. 45, whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods, or chattels, shall, whether or not any explosion take place, and whether or not any injury be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Placing gunpowder near a vessel with intent to damage it.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

By sect. 46, whosoever shall unlawfully and maliciously damage, otherwise than by fire, gunpowder, or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary

Damaging ships otherwise than by fire.

16. *Sending Letters threatening, etc.*

confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

As to "damaging with intent to destroy or render useless," see sect. 15, *ante*, 776.

Exhibiting false signals, etc.

By sect. 47, whosoever shall unlawfully mask, alter, or remove any light or signal, or unlawfully exhibit any false light or signal, with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is hereinbefore provided, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Removing or concealing buoys and other sea marks.

By sect. 48, whosoever shall unlawfully and maliciously cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall unlawfully and maliciously do any act with intent to cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall in any other manner unlawfully and maliciously injure or conceal any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen for the purpose of navigation, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

Destroying wrecks or any articles belonging thereto.

By sect. 49, whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

XVI. Sending Letters threatening to Burn or Destroy.

Sending letters threatening to burn or destroy houses, buildings, ships, etc.

By sect. 50, whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, or any grain, hay, or straw, or other agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to the law upon threatening letters in general, see the 24 & 25 Vict. c. 100, s. 16, tit. "*Threatening Letters*," Vol. V.

17. *Injuries not before provided for.*

This clause is made to meet difficulties which have arisen in such cases as *R. v. Paddle, R. & R. 484*; *Reg. v. Burrigide, 2 M. & Rob. 296*; *Reg. v. Grimwade, 1 C. & K. 592*, which decided that the letter must be sent to the party threatened, the words in the repealed statute being "if any person shall knowingly send, etc., to any other person;" and also to avoid any difficulty which might arise as to whether the letter were sent, delivered, or uttered, by adding the words "or directly or indirectly cause to be received."

It was held that a letter, the necessary construction of which was not a threat to burn, was not within the statute. (*R. v. Jepson, 2 East, P. C. c. 23, s. 2, p. 1115, note (a)*).

Necessary construction of the letter.

It is a question for the jury whether the letter contains a threat to burn or not. (*R. v. Tyler, 1 Moo. C. C. 428.*)

Threat a question for the jury.

A threat to burn standing corn is not within the statute. (*Reg. v. Hill, 5 Cox, C. C. 233.*)

Threat to burn standing corn.

XVII. **Injuries not before Provided for.**

By sect. 51, whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding five pounds, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour; and in case any such offence shall be committed between the hours of nine of the clock in the evening and six of the clock in the next morning, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding five years and not less than three [five],—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Persons committing malicious injuries not before provided for exceeding the amount of £5.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

Damage to the amount of five pounds must be done on one occasion to bring a case within this section. (*Reg. v. Williams, 9 Cox, C. C. 338.*)

To the value of £5.

By sect. 52, whosoever shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding two months, or else shall forfeit and pay such sum of money not exceeding five pounds as to the justice shall seem meet, and also such further sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury, or spoil so committed, not exceeding the sum of five pounds; which last-mentioned sum of money shall, in the case of private property, be paid to the party aggrieved; and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in the same manner as every penalty imposed by a justice of the peace under this Act; and if such sums of money, together with costs (if ordered) shall not be paid either immediately after the conviction, or within such period as the justice shall at the time of the con-

Persons committing damage to any property, in any case not previously provided for, may be committed or fined, and compelled by a justice to pay compensation not exceeding £5.

Application of the money awarded.

18. Making Gunpowder to commit Offences, etc.

Not to extend to certain cases herein named.

Bona fides of claim of right is for the magistrates.

Person may be convicted under this section, though former proceeding were had under sect. 10.

Actual damage must be done.

Preceding section to extend to trees.

viction appoint, the justice may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, as the justice shall think fit, for any term not exceeding two months, unless such sums and costs be sooner paid: Provided that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this Act had not passed.

It is a question for the magistrates, under all the circumstances, whether the party acted under a fair and reasonable supposition of right. (*Reg. v. Justices of Richmond*, 8 Cox, C. C. 314; *Reg. v. Dodson*, 9 A. & E. 704.)

A person who sets fire to letters in a pillar for receiving them may be convicted under this section, although originally charged with the offence under section 10 of the Act, and remanded, and on the hearing that charge was abandoned, and although there was no information on oath, and the offender was not found committing the offence. (*Shepherd v. The Postmaster General*, 10 Cox, C. C. 15.)

It seems that some actual damage must be done; the mere fact of a man treading down grass would not be sufficient. (*See Butter v. Turley*, 2 C. & P. 585; *M. & M.* 55.)

By sect. 53, the provisions in the last preceding section contained shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided.

This clause removes the difficulty occasioned by the conflicting decisions in *Reg. v. Dodson*, 9 A. & E. 704; and *Chanter v. Greame*, 13 Q. B. 216; and trees under the value of one shilling are now protected by this section.

XVIII. Making Gunpowder to Commit Offences, and searching for the same.

Making or having gunpowder, etc., with intent to commit any felony against this Act.

By sect. 54, whosoever shall make or manufacture, or knowingly have in his possession, any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent thereby or by means thereof to commit, or for the purpose of enabling any other person to commit, any of the felonies in this Act mentioned, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

See sects. 9, 10, *ante*, 773.

Justices may issue warrants for searching houses, etc., for such gunpowder, etc.

By sect. 55, any justice of the peace of any county or place in which any machine, engine, implement, or thing, or any gunpowder or other explosive, dangerous, or noxious substance, is suspected to be made, kept, or carried for the purpose of being used in committing any of the felonies in this Act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal for searching in the daytime any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, waggon,

cart, ship, boat, or vessel, in which the same is suspected to be made, kept, or carried for such purpose as hereinbefore mentioned; and every person acting in the execution of any such warrant shall have, for seizing, removing to proper places, and detaining every such machine, engine, implement, and thing, and all such gunpowder, explosive, dangerous, or noxious substances found upon such search, which he shall have good cause to suspect to be intended to be used in committing any such offence, and the barrels, packages, cases, and other receptacles in which the same shall be, the same powers and protections which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by the Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and thirty-nine, intituled "An Act to Amend the Law concerning the Making, Keeping, and Carriage of Gunpowder and Compositions of an Explosive Nature, and concerning the Manufacture, Sale, and Use of Fireworks."

19. *General
Clauses of
the Act.*

See sects. 9, 10, *ante*, 773.

As to the 23 & 24 Vict. c. 139, see tit. "*Gunpowder*," Vol. II.

XIX. General Clauses of the Act.

By sect. 56, in the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act shall on conviction be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

Principals in the second degree and accessories.

Abettors in misdemeanours.

And see sect. 63, *post*, 795, as to abettors in offences punishable on summary conviction.

By sect. 57, any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against this Act, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.

A person loitering at night, and suspected of any felony against this Act, may be apprehended.

And see sect. 61, *post*, 794.

The above clause, and the 66th section of the 24 & 25 Vict. c. 100, are taken from the repealed statute 9 & 10 Vict. c. 25, s. 13, where the words "as soon as reasonably may be," do not appear.

By sect. 14 of the repealed statute, the person apprehended cannot be detained beyond noon of the following day; but under the words of the above section it is left an open question what is a reasonable detention, and it will depend upon the circumstances of each particular case.

By sect. 58, every punishment and forfeiture by this Act imposed on any person maliciously committing any offence whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Malice against owner of property unnecessary.

19. General Clauses of the Act.

Provisions of this Act shall apply to persons in possession of the property injured.

Intent to injure or defraud particular persons need not be stated in any indictment.

Persons in the act of committing any offence may be apprehended without a warrant.

Any person found committing an offence at night may be arrested.

"Found committing the offence."

"Owner of property or his servant."

Mode of compelling the appearance of persons punishable on summary conviction.

By sect. 59, every provision of this Act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, shall do any of the acts hereinbefore made penal, although the offender shall be in possession of the property against or in respect of which such act shall be done.

This clause extends the Act to persons in possession of the property injured, provided they intend to injure or defraud some other person. Tenants are therefore within this section, and the doubt raised in *Mills v. Collett*, 6 Bing. R. 85, is cleared away.

By sect. 60, it shall be sufficient in any indictment for any offence against this Act, where it shall be necessary to allege an intent to injure or defraud, to allege that the party accused did the act with intent to injure or defraud (as the case may be), without alleging an intent to injure or defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud (as the case may be).

By sect. 61, any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law.

And see sect. 57, *ante*, 793.

By the 14 & 15 Vict. c. 19, s. 11, it is provided that "any person whatsoever may apprehend any person who shall be found committing any indictable offence in the night, and convey him, or deliver him to some constable or other peace officer, in order to his being conveyed as soon as conveniently may be before a justice of the peace, to be dealt with according to law; and by sect. 12, any one assaulting a person entitled to apprehend him will be guilty of a misdemeanour." And see sects. 103, 104 of 24 & 25 Vict. c. 96, *ante*, 287, 288.

To justify a party in apprehending an offender, he must find him in the actual commission of the offence or on a quick pursuit, and he must take him directly to a magistrate, and if he take him elsewhere he loses the protection of this Act. (*R. v. Curran*, 3 C. & P. 397; *Hannay v. Boulbee*, 4 C. & P. 350. And see the notes to sects. 103, 104 of 24 & 25 Vict. c. 96, *ante*, 288.)

It was held that a reversioner, whether an owner or not, within the 7 & 8 Geo. 4, c. 30, s. 28, who gave a person into custody was entitled to notice under sect. 24 of that statute if he *bonâ fide* believed himself entitled so to act. (*Horn v. Thornborough*, 18 L. J. M. C. 206; 3 Ex. 846.) And so of an attorney for a mortgagee of a house if he acted *bonâ fide*, and with a reasonable belief that he was the servant, and had the authority of the mortgagee. (*Kime v. Evershed*, 10 Q. B. 148.)

By sect. 62, where any person shall be charged on the oath of a credible witness before any justice of the peace with any offence punishable on summary conviction under this Act, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him personally, or by leaving the same at his usual place of abode), the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think it), without any pre-

vious summons (unless where otherwise specially directed), issue such warrant; and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

19. *General
Clauses of
the Act.*

See the notes to sect. 105 of the 24 & 25 Vict. c. 96, *ante*, 288.

By sect. 63, whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable.

Abettors in offences punishable on summary conviction.

By sect. 64, every sum of money which shall be forfeited for the amount of any injury done shall be assessed in each case by the convicting justice, and shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no directions for the payment thereof to any person: Provided that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied.

Application of forfeitures and penalties upon summary convictions.

Proviso where several persons join in commission of same offence.

See note to sect. 106 of the 24 & 25 Vict. c. 96, *ante*, 289.

The 18 & 19 Vict. c. 126, s. 22, after reciting that it is expedient to amend the law as to witnesses in cases of wilful or malicious injuries to property, goes on to enact that in all cases where any justice or justices of the peace have or shall hereafter have power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

Parties aggrieved may receive compensation though examined as witnesses.

By sect. 65, in every case of a summary conviction under this Act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall, at the time of the conviction, appoint, the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds; and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds; and for any term not exceeding six months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

If a person summarily convicted shall not pay, etc., the justice may commit him.

By sect. 66, where any person shall be summarily convicted before a justice of the peace of any offence against this Act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction upon his making such satisfaction to the party ag-

The justice may discharge the offender in certain cases.

19. *General
Clauses of
the Act.*

A summary conviction shall be a bar to any other proceeding for the same cause.

grieved for damages and costs, or either of them, as shall be ascertained by the justice.

By sect. 67, when any person convicted of any offence punishable upon summary conviction by virtue of this Act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the Crown, or the lord lieutenant or other chief governor of Ireland, or shall have suffered the imprisonment awarded for nonpayment thereof, or the imprisonment awarded in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, he shall be released from all further or other proceedings for the same cause.

Appeal.

By sect. 68, in all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction, for the county or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; or if such appeal shall be against any conviction whereby only a penalty or sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the Court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the Court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace or other proper officer shall forthwith indorse on the conviction a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

No certiorari,
etc.

By sect. 69, no such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by certiorari into any of her Majesty's superior courts of record; and no warrant of

commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

19. *General
Clauses of
the Act.*

See note to sect. 111 of the 24 & 25 Vict. c. 96, *ante*, 290.

By sect. 70, every justice of the peace before whom any person shall be convicted of any offence against this Act shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Convictions to be returned to the quarter sessions.

How far evidence in future cases.

As to previous convictions, see also 14 & 15 Vict. c. 99, s. 13, tit. "*Evidence*," Vol. II.

By sect. 71, all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action.

Venue in proceedings against persons acting under this Act.

Notice of action.

General issue, etc.

See notes to sect. 113 of the 24 & 25 Vict. c. 96, *ante*, 294, and sect. 61 of this Act, *ante*, 794.

By sect. 72, all indictable offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas." Provided that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.

Offences committed within the jurisdiction of the Admiralty.

See also the 7 & 8 Vict. c. 2, and tit. "*Admiralty Court*," Vol. I.

By sect. 73, whenever any person shall be convicted of any indictable misdemeanour punishable under this Act, the Court may, if it shall think fit, in addition to or in lieu of any of the punishments by this Act

Fine and sureties for keeping the peace; in what cases.

19: *General
Clauses of
the Act.*

authorized, fine the offender, and require him to enter into his own recognizances and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this Act, the Court may, if it shall think fit, require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this Act authorized: Provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

Hard labour.

By sect. 74, whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this Act, the Court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

See notes to sect. 118 of the 24 & 25 Vict. c. 96, *ante*, 298.

Solitary confinement and whipping.

By sect. 75, whenever solitary confinement may be awarded for any indictable offence under this Act, the Court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any indictable offence under this Act, the Court may sentence the offender to be once privately whipped; and the number of strokes, and the instrument with which they shall be inflicted, shall be specified by the Court in the sentence.

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93;

By sect. 76, every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the Act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the Act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act that may be passed for like purposes, and all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this Act: Provided that nothing in this Act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable on summary conviction within the city of London or the metropolitan police district or the recovery or application of any penalty or forfeiture for any such offence.

except in London and the metropolitan police district.

See sects. 61-70, *ante*, 794-797.

The costs of the prosecution of misdemeanours against this Act may be allowed.

By sect. 77, the Court before which any indictable misdemeanour against this Act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

As to costs in general, see tit. "*Costs*," Vol. I.

Act not to extend to Scotland.

By sect. 78, nothing in this Act contained shall extend to Scotland except as hereinbefore otherwise expressly provided.

Commencement of the Act.

By sect. 79, this Act shall commence and take effect on the first day of November one thousand eight hundred and sixty-one.

XX. Forms.

For form of commitment, see *ante*, 305, 764.

Commitment.

— } *The jurors of our lady the Queen, upon their oath, present that to wit. } J. S., on the day of , in the year of the reign of our sovereign lady the now Queen Victoria, feloniously, unlawfully, and maliciously did set fire to a certain church [“any church, chapel, meeting house, or other place of Divine worship”, situate at the parish of , in the county of , against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*

Indictment for setting fire to a church, etc., s. 1.

(Commence as *ante*, form (1)) *feloniously, unlawfully, and maliciously did set fire to a certain dwelling-house of J. N., situate in the parish of B., in the county of M., one J. L. and M. his wife then, to wit, at the time of committing of the felony aforesaid, being in the said dwelling-house; against the form, etc.*

Indictment for setting fire to a house, some person being therein, s. 2.

(Commence as *ante*, form (1)) *feloniously, unlawfully, and maliciously did set fire to a certain dwelling-house [“any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, storehouse, or granary, hovel, shed, or fold, or any farm building, or building or erection used in farming land or in carrying on trade or manufacture or any branch thereof”] of J. N., situate at the parish of B., in the county of M., with intent thereby to injure the said J. N. [or, to defraud a certain insurance company called]; against the form, etc.*

Indictment for setting fire to a house with intent to injure, etc., s. 3.

An indictment under sects. 4, 5, or 6 may easily be framed from the above forms.

(Commence as *ante*, form (1)) *feloniously, unlawfully, and maliciously did set fire to a certain heap of straw in a certain building of J. N., situate at the parish of B., in the county of M.; against the form, etc.*

Indictment for setting fire to goods in any building, s. 7.

(Commence as *ante*, form (1)) *feloniously, unlawfully, and maliciously did attempt, by then, etc. [state the overt act], feloniously, unlawfully, and maliciously to set fire to a certain dwelling-house [“any building, or any matter or thing being in, against, or under any building, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony”] of J. N., situate at the parish of B., in the county of M., with intent thereby then to injure the said J. N.; against the form, etc.*

Indictment for attempting to set fire to buildings, etc., s. 8.

(Commence as *ante*, form (1)) *feloniously, unlawfully, and maliciously did, by the explosion of a certain explosive substance, that is to say, gunpowder, destroy [“destroy, throw down, or damage”] a certain part [“the whole or any part”] of a certain dwelling-house of J. N., situate at the parish of B., in the county of M., one A. N., then being in the said dwelling-house [or, of a certain building of J. N., situate at the parish of B., in the county of M., whereby the life of one A. N. was then endangered]; against the form, etc.*

Indictment for destroying by explosion part of a building, some person being therein, or whereby life was endangered, s. 9.

(Commence as *ante*, form (1)) *feloniously, unlawfully, and maliciously did throw into the dwelling of J. N. [“place, or throw in, into, upon, against, or near*

Indictment for throwing gunpowder into a

20. *Forms.*

house with intent
to destroy, etc.,
s. 10.

any building"], *situate at the parish of B., in the county of M., a large quantity, to wit, two pounds of a certain explosive substance, that is to say, gunpowder, with intent thereby then to destroy* ["destroy or damage"] *the said dwelling-house; against the form, etc.*

Indictment for
riotously be-
ginning to
demolish a house,
s. 11.

— } *The jurors of our lady the Queen, upon their oath, present that*
to wit } *on the* day of , *in the*
year of the reign of our lady the now Queen Victoria, at the parish of B., in
the county of M., J. S., J. W., and E. W., together with divers other evil-dis-
posed persons, to the jurors aforesaid unknown, unlawfully, riotously, and
tumultuously did assemble together, to the disturbance of the public peace; and,
being then and there so unlawfully, riotously, and tumultuously assembled toge-
*ther as aforesaid, did then and there *feloniously, unlawfully, and with force,*
begin to demolish and pull down the dwelling-house of one J. N. there situate
["any church, chapel, etc., or house, stable, etc., or any building or erection,
etc., or any building belonging to the Queen, etc., or any machinery, etc.
etc."]; against the form, etc.

Upon this indictment the jury may find the prisoners guilty of a misde-
meanour under sect. 12. See *ante*, 775.

Indictment for
riotously injuring
a building, etc.,
s. 12.

Proceed as in the last precedent to the asterisk, and then add, "*unlawfully*
and with force injure [or, *damage*] *a certain dwelling-house of one J. N. there*
situate ["or any other building, etc., mentioned in this and the preceding sec-
tion"]; *against the form, etc.*

Indictment
against a tenant
for pulling down
a house, s. 13.

— } *The jurors of our lady the Queen, upon their oath, present that,*
to wit } *on the* day of , *J. S. was possessed*
of a certain dwelling-house ["dwelling-house or other building"], situate in
the parish of B., in the county of M.; then held by him, the said J. S., for a
term then unexpired ["held for any term of years or other less term, or at will,
or held over after the termination of any tenancy"], and that the said J. S.,
being so possessed as aforesaid, on the day and year aforesaid, did unlawfully
and maliciously pull down and demolish the said dwelling-house ["pull down
or demolish, or begin to pull down or demolish the same or any part thereof,"
or "pull down or sever from the freehold any fixture being fixed in or to such
dwelling-house or building"]; against the form, etc.

Indictment for
cutting, etc.,
goods in the
loom, s. 14.

(Commence as *ante*, form (1)) *twenty yards of silk* ["any goods or article of
silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of
those materials mixed with each other, or mixed with any other material, or
any framework-knitted piece, stocking, hose, or lace, respectively"], *of the goods*
and chattels of A. B., in a certain loom ["in the loom or frame, or on any ma-
chine or engine, or on the rack or tenters, or in any stage, process, or progress
of manufacture"] *then being, feloniously, unlawfully, and maliciously did cut,*
break, and destroy [or, "did damage, with intent to destroy, or to render use-
less"]; *against the form, etc.*

Indictment for
breaking, etc.,
warps of silk,
etc., or ma-
chinery, etc.,
s. 14.

(Commence as *ante*, form (1)) *one warp of silk* ["any warp or shute of silk,
woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those
materials mixed with each other, or mixed with any other material, or any
loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed
or moveable, prepared for or employed in carding, spinning, throwing, weav-
ing, fulling, shearing, or otherwise manufacturing or preparing any such
goods or articles"] *the goods and chattels of A. B. feloniously, maliciously, and*
unlawfully did cut and destroy ["cut, break, or destroy, or damage with intent
to destroy or to render useless"]; *against the form, etc.*

(Commence as ante, form (1).) *into a certain building* ["house, shop, building, or place"] of *A. B.*, situate at the parish of *B.*, in the county of *M.*, feloniously and by force did enter, with intent certain silken goods of the said *A. B.* in a certain loom then and there being [or, "certain looms and machinery then and there prepared for and employed in the weaving, manufacturing, and preparing of woollen goods," according to the intent] feloniously, unlawfully, and maliciously to cut, break, and destroy [or, "to damage with intent to destroy"]; against the form, etc.

Forms.

Indictment for forcibly entering a building to commit the above offences, s. 14.

(Commence as ante, form (1).) *a certain thrashing machine* ["any machine or engine, whether fixed or moveable, used or intended to be used, for sowing, reaping, mowing, thrashing, ploughing, or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, except the manufacture of silk, woollen, linen, cotton, hair, mohair, or alpaca goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace"], the property of *J. N.*, feloniously, unlawfully, and maliciously, did cut, break, and destroy ["cut, break, or destroy, or damage with intent to destroy or render useless"]; against the form, etc.

Indictment for destroying thrashing-machines, etc., s. 15.

(Commence as ante, form (1).) *feloniously, unlawfully, and maliciously did set fire to a certain crop of wheat* ["any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing"] of the goods and chattels of *J. N.*, then standing and growing; against the form, etc.

Indictment for setting fire to a crop of wheat, s. 16.

(Commence as ante, form (1).) *feloniously, unlawfully, and maliciously did set fire to a certain stack of wheat* ["any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any steer of wood or bark"] of *J. N.*; against the form, etc.

Indictment for setting fire to a stack of wheat, s. 17.

(Commence as ante, form (1).) *feloniously, unlawfully, and maliciously did cut and destroy* ["cut or otherwise destroy"] one hundred hopbinds, the property of *J. N.*, then growing on poles in a certain plantation of hops of the said *J. N.*, situate in the parish of *B.*, in the county of *K.*; against the form, etc.

Indictment for destroying hopbinds, etc., s. 19.

(Commence as ante, form (1).) *two elm trees* ["the whole or any part of any tree, sapling, or shrub, or any underwood"] the property of *J. N.*, then growing in a certain park ["park, pleasure-ground, garden, orchard, or avenue, or any ground adjoining or belonging to a dwelling-house"] of the said *J. N.*, situate in the parish of _____ in the county of _____, feloniously, unlawfully, and maliciously did cut and damage ["cut, break, bark, root up, or otherwise destroy or damage"], thereby then doing injury to the said *J. N.* to an amount exceeding the sum of £1, to wit the amount of £2; against the form, etc.

Indictment for cutting trees in parks. Value above £1, s. 20.

(Commence as ante, form (1).) *ten elm trees* ["the whole or any part of any tree, sapling, or shrub, or any underwood"] the property of *J. N.*, then growing in a certain close ["elsewhere than in any park," etc., see

Indictment for cutting trees elsewhere, value above £5, s. 21.

Forms.

in last precedent], of the said J. N., situate in the parish of _____ in the county of _____ feloniously, unlawfully, and maliciously did cut and damage [see the last precedent], thereby then doing injury to the said J. N. to an amount exceeding the sum of £5, to wit, the amount of £6; against the form, etc.

Conviction for damaging trees, shrubs, etc., to the value of 1s., s. 22.

For that he, the said A. B., on the _____ day of _____ at the parish of _____ in the said county : unlawfully and maliciously did cut [or break, or bark, or root up] [or destroy or damage] certain trees [or part of a certain ash tree or sapling or shrub or certain underwood] to wit, three ash trees, the property of [the said] C. D. [the complainant] then growing on certain land there [in the occupation] of the said C. D., thereby then doing injury to the said C. D. to the amount of one shilling at the least, and not exceeding one pound, to wit, two shillings, contrary, etc.

Where the damage is less than one shilling, see example in form for sect. 52, post, 807; and see sect. 53, ante, 792.

The like after a previous conviction, s. 22.

After proceeding with the form of conviction to the conclusion of the statement of the offence, and before the adjudication, add:—*And whereas it is now duly proved before us, the said justices, that the said A. B. was heretofore, to wit on the _____ day of _____ in the year of our Lord _____ duly convicted before J. L., Esq., one of her Majesty's justices of the peace in and for the said county of _____, for that he, the said A. B., did on the _____ day of _____ at the parish of _____ in the said county [state the offence as in the former conviction] and the said A. B. was thereupon adjudged for his last-mentioned offence to [here state the former adjudication]. And we adjudge the said A. B. for his said second offence, of which he has been so convicted this day as aforesaid to forfeit, etc. [proceeding to the end as in the ordinary way].*

Indictment for cutting trees wherever growing, to the amount of 1s., after two previous convictions for the like offences, sect. 22.

(Commence as ante, form (1), and after stating the two previous convictions, for which see form (42), tit. "Larceny," ante, 311, proceed as follows.) *And the jurors aforesaid upon their oath aforesaid do further present that the said J. S. afterwards, and after he had been so twice convicted as aforesaid, to wit, on the _____ day of _____, in the year of our Lord _____, one other elm tree ["the whole or any part of any tree, sapling, shrub, or any underwood"], the property of J. N., then growing, unlawfully and maliciously did cut and damage [cut, etc., as in last precedents], thereby then doing injury to the said J. N. to the amount of two shillings; against the form, etc.*

Conviction for damaging plants, fruits, etc., in gardens, sect. 22.

For that he the said A. B. on _____, at _____, unlawfully and maliciously did destroy [or damage with intent to destroy the same] certain plants [or roots, or fruit, or vegetable productions] to wit [ten cauliflowerers], the property of [the said] C. D., the complainant, then growing in a certain garden [or orchard, or nursery ground, or hothouse, or greenhouse, or conservatory], [in the occupation] of the said C. D., there thereby doing injury to the said C. D. to the amount of _____; contrary, etc.

Indictment for destroying

(Commence as ante, form (1), and after setting out the previous conviction, for which see form (42), tit. "Larceny," ante, 311, proceed as follows.) *And the jurors aforesaid upon their oath aforesaid do further present that the said J. N. afterwards, and after he was so convicted as aforesaid, to wit, on the _____ day of _____, in the year of our Lord _____,*

twenty pounds' weight of grapes ["any plant, root, fruit, or vegetable production"], the property of J. N., in a certain garden ["in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory"] of the said J. N., situate in the parish of , in the county of , then growing, feloniously, unlawfully, and maliciously did destroy ["destroy or damage with intent to destroy"]; against the form, etc.

20. Forms.

plants in a garden after a previous conviction for a like offence, s. 23.

For that he the said A. B. on , at , unlawfully and maliciously did destroy [or damage with intent then to destroy the same] certain cultivated roots [or plants] used for the food of man [or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of a certain manufacture, to wit , to wit, ten , the property of [the said] C. D., then growing in a certain open [or enclosed] land [in the occupation] of the said C. D. there, not being a garden, orchard, or nursery ground, thereby doing injury to the said C. D., to the amount of , contrary, etc.

Conviction for damaging plants, cultivated roots, etc., growing elsewhere, s. 24.

For a form of conviction for a second offence under this section, see form for sect. 22, ante, 802.

For that he the said A. B. on , at , unlawfully and maliciously did cut [or break or throw down] [or destroy] [a certain part of] a certain fence there, to wit, a quickset hedge [or as the case may be], [or a certain wall or stile or gate there] the property of [the said] C. D., the complainant thereby then doing injury to the said C. D. to the amount of ; contrary, etc.

Conviction for damaging fences, stiles, gates, etc., s. 25.

For a form of conviction for a second offence under this section, see form for sect. 22, ante, 802.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did set fire to a certain mine of coal ["any mine of coal, cannel coal, anthracite, or other mineral fuel"] of J. N., situate in the parish of , in the county of ; against the form, etc.

Indictment for setting fire to a coal mine, s. 26.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did cause a quantity of water ["any water"] to be conveyed ["to be conveyed or run"] into a certain mine ["into any mine or into any subterraneous passage communicating therewith"] of J. N., situate in the parish of , in the county of , with intent then thereby feloniously to destroy ["destroy or damage, or hinder or delay the working thereof"] the said mine; against the form, etc.

Indictment for drowning a mine, s. 28.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did pull down ["pull down, fill up, or obstruct, or damage with intent to destroy, obstruct, or render useless"] a certain airway ["airway, waterway, drain, pit, level, or shaft"] of and belonging to a certain mine of J. N., situate at the parish of , in the county of , with intent thereby then to destroy ["destroy or damage, or hinder or delay the working thereof"] the said mine; against the form, etc.

Indictment for pulling down airways, etc., s. 28.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did pull down and destroy ["pull down or destroy, or damage with intent to destroy or render useless"] a certain steam engine, the property of J. N., for the sinking ["sinking, draining, ventilating, or working," etc. etc.] of a certain mine

Indictment for destroying engines, etc., used in mines, s. 29.

20. *Forms.* *of the said J. N., situate at the parish of* , *in the county of*
; *against the form, etc.*

Indictments may also be framed upon this section for stopping, obstructing, or hindering the working of an engine with intent to destroy the mine or to hinder the working of it; and also cutting, etc., any rope, etc., care being taken to follow the words of the section.

Indictment for cutting down river or sea-banks, s. 30.

(Commence as *ante*, form (1).) *a certain bank* ["any sea-bank or sea-wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh"] *of a certain river, called the river* , *feloniously, unlawfully, and maliciously did cut down and break down, whereby certain land* ["land or building"] *was then overflowed and damaged* ["shall be or shall be in danger of being overflowed or damaged"]; *against the form, etc.*

Indictment for throwing down, etc., locks, etc., s. 30.

(Commence as *ante*, form (1).) *a certain lock* ["any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal"] *belonging to a certain canal, called the* , *situate at the parish of* , *in the county of* , *feloniously, unlawfully, and maliciously did throw down* ["throw, break, or cut down, level, undermine, or otherwise destroy"]; *against the form, etc.*

Indictment for cutting piles in rivers, etc., s. 31.

(Commence as *ante*, form (1).) *a certain pile* ["any piles, chalk, or other materials fixed in the ground, and used for securing any sea-bank or sea-wall, or the bank, dam, or wall of any river, canal, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock"] *then fixed in the ground, and then used for securing the bank of a certain river, called the river* , *situate in the parish of* , *in the county of* , *feloniously, unlawfully, and maliciously did cut off* ["cut off, draw up, or remove"]; *against the form, etc.*

Indictment for opening floodgates, etc., with intent, etc., s. 31.

(Commence as *ante*, form (1).) *a certain floodgate, situate in the parish of* , *in the county of* , *of and belonging to a certain navigable river, called the river* , *feloniously, unlawfully, and maliciously did open and draw up* ["open and draw up any floodgate, or do any other injury or mischief to any navigable river or canal"], *with intent thereby to obstruct and prevent the carrying on* ["carrying on, completing, or maintaining,"] *of the navigation of the said navigable river, and thereby then did obstruct the carrying on of the said navigable river; against the form, etc.*

Indictment for cutting through and destroying the dam of a fishpond, s. 32.

(Commence as *ante*, form (1).) *the dam of a certain fishpond* ["the dam, floodgate, or sluice of any fishpond, or of any water which shall be private property, or in which there shall be any private right of fishery"] *of one J. N., situate in the parish of* , *in the county of* , *unlawfully and maliciously did cut through and destroy* ["cut through, break down, or otherwise destroy"], *with intent thereby then to take and destroy divers of the fish in the said pond then being* [or, *and did thereby cause the loss and destruction of divers of the fish*]; *against the form, etc.*

Indictment for putting lime into a fishpond, s. 32.

(Commence as *ante*, form (1).) *unlawfully and maliciously did put a large quantity, to wit, ten bushels of lime* ["lime or other noxious material"] *into a*

certain fishpond [see the last precedent] of J. N., situate in the parish of _____, in the county of _____, with intent thereby then to destroy the fish in the said pond then being ["that may then be or may thereafter be put therein"]; against the form, etc.

20. Forms.

(Commence as ante, form (1).) the dam ["dam or floodgate"] of a certain millpond of J. N., situate in the parish of _____, in the county of _____, ["millpond, reservoir, or pool"], unlawfully and maliciously did cut through and destroy ["cut through, break down, or otherwise destroy"]; against the form, etc.

Indictment for cutting through the dam of a millpond, s. 32.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did pull down and destroy ["pull or throw down, or in anywise destroy"] a certain bridge over a certain highway ["any bridge, whether over any stream of water or not, or any viaduct or aqueduct, over or under which bridge, viaduct, or aqueduct, any highway, railway, or canal shall pass"], situate in the parish of _____, in the county of _____; against the form, etc.

Indictment for pulling down a bridge, s. 33.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did [state the injury] a certain bridge over a certain highway, situate in the parish of _____, in the county of _____, with intent thereby to render the said bridge ["such bridge or any part thereof"] dangerous and impassable, and did thereby then render the said bridge dangerous and impassable; against the form, etc.

Indictment for injuring a bridge with intent, etc., s. 33.

(Commence as ante, form (1).) a certain turnpike gate [see the words of the section], situate at the parish of _____, in the county of _____, unlawfully and maliciously did throw down, level, and destroy ["throw down, level, or otherwise destroy, in whole or in part"]; against the form, etc.

Indictment for throwing down a turnpike gate, s. 34.

(Commence as ante, form (1).) feloniously, unlawfully, and maliciously did put and place a piece of wood upon a certain railway, called _____, in the parish of _____, in the county of _____, ["put, place, cast, or throw upon or across any railway any wood, stone, matter, or thing," etc., see words of section], with intent thereby then to obstruct, upset, overthrow, and injure a certain engine and certain carriages using the said railway ["with intent to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway"]; against the form, etc.

Indictment for placing wood on rails with intent, etc., s. 35.

(Commence as ante, form (1).) unlawfully did [here state the act done], and did thereby then obstruct ["obstruct or cause to be obstructed"] a certain engine ["engine or carriage"] then using a certain railway, called _____, in the parish of _____, in the county of _____; against the form, etc.

Indictment for unlawfully, etc., obstructing an engine, s. 36.

(Commence as ante, form (1).) wilfully did omit and neglect [here state the act omitted or neglected to be done], and did thereby then obstruct [as in last precedent].

Indictment for obstructing an engine by any wilful neglect, s. 36.

(Commence as ante, form (1).) unlawfully and maliciously did cut ["cut, break, throw down, destroy, injure, or remove"] a certain wire, being part of

Indictment for cutting a tele-

20. *Forms.* *a certain electric telegraph, situate at the parish of* , *in the*
county of [see the words of the section]; *against the form, etc.*
 graph wire,
 ss. 37, 38.

Indictment for preventing the sending of a message, ss. 37, 38. (Commence as *ante*, form (1).) *unlawfully and maliciously did* [here state the act by which the prevention was caused], *and did thereby then prevent and obstruct the sending* ["sending, conveyance, or delivery"] *of a certain communication by a certain telegraph, situate at the parish of* , *in the*
county of ; *against the form, etc.*

Indictment for destroying works of art, s. 39. An indictment for a misdemeanour under section 39 may readily be framed from one of the above precedents.

Indictment for killing a horse, s. 40. (Commence as *ante*, form (1).) *one horse* ["any cattle"], *of the goods and chattels of J. N., feloniously, unlawfully, and maliciously did kill* ["kill, maim, or wound"]; *against the form, etc.*

Conviction for killing, etc., animals, s. 41. *For that he, the said C. D., on, etc., at, etc., unlawfully and maliciously did kill* ["kill, maim, or wound"] *a certain cat* ["dog, bird, beast, or other animal, the same not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose"] *being kept for a domestic purpose, contrary, etc.*

For a form of conviction for a second offence see *ante*, 802, form for sect. 22.

Indictment for setting fire to a ship, s. 42. (Commence as *ante*, form (1).) *feloniously, unlawfully, and maliciously did set fire to* ["set fire to, cast away, or in anywise destroy"] *a certain ship* ["any ship or vessel, whether the same be complete or in an unfinished state"] *called the* , *the property of J. N.; against the form, etc.*

Indictment for setting fire to a ship with intent, s. 43. (Commence as *ante*, form (1).) *on board a certain ship called the* , *the property of J. N., on a certain voyage upon the high seas, feloniously, unlawfully, and maliciously did set fire* ["set fire to or cast away, or in anywise destroy"] *the said ship, with intent thereby to prejudice the said J. N., the owner of the said ship* [or, "one E. F., the owner of certain goods then being on board the said ship;" or "one E. F., who had before then underwritten a certain policy of insurance upon the said ship;" or "on the freight of the said ship;" or "on any goods then being on board the said ship"]; *against the form, etc.*

As to the venue, see 7 & 8 Vict. c. 2, s. 2, and sect. 72 of the present Act, *ante*, 797.

Indictment for throwing gunpowder into a vessel with intent to damage it, s. 45. An indictment for this offence may readily be drawn from the precedent for an indictment under section 10, *ante*, 799.

Indictment for damaging a ship otherwise than by fire, s. 46. [If the offence be committed on the high seas the averments in the precedent to section 43 should be followed; but if committed in the body of a county, see precedent to section 42. Allege that the defendant did damage a certain ship by (stating the act).]

Sussex } *The jurors of our lady the Queen upon their oath present that before to wit, } and at the time of committing the felony, hereinafter mentioned, a certain ship ["any ship, vessel, or boat"], the property of some person or persons to the jurors aforesaid unknown, was sailing on the high seas near unto the parish of in the county of Sussex; and that J. S. on the day of year of the reign of our Sovereign lady the now Queen Victoria, well knowing the premises, whilst the said ship was so sailing on the high seas near unto the said parish as aforesaid, feloniously and unlawfully did exhibit a false light ["any false light or signal"], with intent thereby to bring the said ship into danger; against the form, etc.*

Indictment for exhibiting false signals, s. 47.

(Commence as in the last precedent) *whilst the said ship was so sailing near the said parish as aforesaid, feloniously, unlawfully, and maliciously did [state the act done] the said act so done by the said J. S. as aforesaid, then tending to the immediate loss [loss or destruction] of the said ship; against the form, etc.*

Indictment for doing an act tending to the immediate loss of the ship, s. 47.

Sussex } *The jurors of our lady the Queen upon their oath present that J. S. on to wit, } the day of in the year of the reign of our sovereign lady the now Queen Victoria, upon the high seas feloniously, unlawfully, and maliciously did cut away a certain buoy ["any boat, buoy, buoy-rope, or mark"], then used for the guidance of seamen, and for the purpose of navigation ["used or intended for the guidance of seamen, or for the purpose of navigation"]; against the form, etc.*

Indictment for cutting away buoys, etc., s. 48.

(Commence as in the first precedent to section 47, *supra*.) *to the jurors aforesaid unknown was stranded and cast on shore ["in distress, or wrecked, stranded, or cast on shore"] at the parish of in the county of , and that J. S. on the day of in the year of the reign of our sovereign lady the now Queen Victoria, and whilst the said ship was so stranded and cast on shore as aforesaid, the hull of the said ship ["any part of any ship or vessel which shall be in distress or wrecked, stranded or cast ashore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel"] feloniously, unlawfully, and maliciously did destroy; against the form, etc.*

Indictment for destroying a part of a ship, etc., in distress, s. 49.

(Commence as *ante*, form (1).) *feloniously and maliciously did send ["send, deliver, or utter, or directly or indirectly cause to be received"] to one J. N. a certain letter ["letter or writing"], directed to the said J. N. by the name and description of Mr. J. N., threatening to burn and destroy a certain dwelling-house ["any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce in or under any building, or any ship or vessel"] the property of the said J. N. [or of one E. N.], [or, "threatening to kill, or maim, or wound a horse of and belonging to him, the said J. N."] he, the said C. D., then well knowing the contents of the said letter, which said letter is as follows, that is to say:—[here set out the letter verbatim]; against the form, etc.*

Indictment for sending a letter threatening to burn a house, etc., s. 50.

(Commence as *ante*, form (1).) *unlawfully and maliciously did commit damage, injury, and, spoil to and upon certain real [or personal] property there of a public [or private] nature, to wit, to and upon , the property of J. N. [or], the damage, injury, and spoil so committed by the said C. D. being to an amount exceeding £5, to wit, £ , contrary to the form of the statute in such case made and provided, and for which no other remedy or punishment is by the same statute provided, and against the peace, etc.*

Indictment for other injuries exceeding £5 in value, s. 51.

For that he the said C. D. on, etc., at, etc., unlawfully, wilfully, and maliciously did commit damage, injury, and spoil to and upon the glass of a cer-

Conviction for damaging any

1. *Nature of Writ, etc.*

other property to amount not exceeding £5, s. 52.

tain window, then the property of A. B., the complainant thereby then doing injury to an amount not exceeding £5, the said damage neither having been done under a fair and reasonable supposition that the said C. D. had a right to do the same, nor having been a trespass (not being wilful or malicious) committed in hunting, fishing, or in pursuit of game; against the form of the statute in such case made and provided, and for which no other remedy or punishment is by the same statute provided, and against the peace, etc.

Indictment for making gunpowder to commit offences, s. 54.

(Commence as *ante*, form (1).) *unlawfully did make and manufacture* ["make or manufacture, or knowingly have in his possession"] *a large quantity, to wit, pounds of gunpowder* ["any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing"], *with intent thereby to* [here state the act intended to be committed according to the words of that section of the statute which declares such act to be a felony]; *against the form, etc.*

Mandamus.

I. *Nature of Writ, and when it lies in General, Proceedings on, and Costs*, p. 808.

[9 Anne, c. 20; 1 Will. 4, c. 21; 6 & 7 Vict. c. 67.]

II. *Concerning Magistrates and Sessions, etc.*, p. 814.III. *Concerning Overseers and Guardians, and concerning Poor, and Parish matters*, p. 815.IV. *Concerning Churchwardens, Churches, Church-Rates, and Meeting-Houses*, p. 820.V. *Concerning Constables and Gaolers*, p. 821.VI. *Concerning Treasurers of Counties and others*, p. 822.I. *Nature of Writ, and when it lies in General, Proceedings on, and Costs.*

Nature of writ, and when it lies, etc.

Mandamus is a command issuing in the Queen's name out of the Court of Queen's Bench, directed to any person, corporation, or inferior Court of judicature, requiring them to do some particular thing therein specified, which appertains to their office and duty. It is a high prerogative writ, of a most extensively remedial nature; and may be issued in some cases where the injured party hath also another (but more tedious) method of redress, as in the case of admission or restitution to an office; but it issues in all cases where the party hath a right to have anything done, and hath no other specific means of compelling its performance. (See 3 *Bl. Com.* 110.) Being a prerogative writ, it runs into all privileged places. (*R. v. Commissioners of Excise*, 2 *T. R.* 385; *R. v. Winchelsea*, 2 *Lev.* 85.)

Will not lie to the Crown.

It will not lie to the crown, or its servants strictly as such, commanding it or them to pay over money, in its or their possession, in liquida-

tion of claims on the crown. (*In re De Bode*, 6 Dowl. 776.) Nor will it lie to the mere public depositaries of money, commanding the payment by them of a sum in gross. (*Ib.*; and see *Ex parte Reeve*, 5 Dowl. 668.)

1. *Nature of Writ, etc.*

That the Court has the power of considering whether justice be best advanced by directing a *mandamus* to issue, or by forbearing to do so, has been settled by several cases. It was laid down by Mr. Justice Ashhurst, in *The King v. The Commissioners of Excise* (2 T. R. 385), that such an application is an appeal to the discretion of the Court. The same rule was acted upon in *The King v. The Justices of Lancashire* (12 East, 366); and in *The King v. The Justices of Buckinghamshire* (1 B. & C. 487; 9 D. & R. 689, S. C.)

In the discretion of Court to grant.

It is always granted, when there is a specific legal right, but no other specific legal remedy (*R. v. Wyndham, Coups*, 378; *Wormwell v. Hailstone*, 6 Bingh. 668; 4 M. & P. 512; *R. v. St. Catherine Dock Company*, 4 B. & Ad. 360; *R. v. Jeyes*, 3 Ad. & Ell. 416); or where it is doubtful whether there is. (*R. v. Nottingham Waterworks Company*, 1 N. & P. 480; 6 A. & Ell. 355, S. C.) But not where a party has a specific legal remedy (*R. v. Bishop of Chester*, 1 T. R. 396; *R. v. Commissioners of Dean*, 2 M. & Sel. 80; *R. v. Stoke Dameril*, 1 N. & P. 56; 5 A. & Ell. 584, S. C.); or a remedy in equity. (*R. v. Marquis of Stafford*, 3 T. R. 646.)

Granted where no other remedy.

It is not a writ grantable of right, but by prerogative; and it is the absence or want of a specific legal remedy which gives the Court jurisdiction. (*R. v. Bristol Dock Company*, 2 Selw. N. P. 1062.)

But it is no objection to the granting a *mandamus* to do a particular act, that an indictment will also lie for the omission to do that act. (*R. v. Severn and Wye Railway Company*, 2 B. & Ald. 646. And see *R. v. Commissioners for Inclosing Lands in the Parish of Dean, etc.*, 2 M. & Sel. 80; *Ex parte Robins*, 7 Dowl. 566; *R. v. Bristol Dock Company*, 6 Jurist, 216.)

It is proper for the purpose of compelling the admission of a party to an office of consequence or value, if there be no other remedy (*R. v. Cambridge University*, 1 W. Black. 552); *aliter* if there be. (*R. v. Stoke Dameril*, 1 N. & P. 56); or the office be of no value. (*Infra*.)

To admit, etc., to an office.

It seems, that whenever a party is improperly suspended or removed from an office, whether its duties are public or private, if he has a certain term therein, and there are profits annexed to it, a *mandamus* lies to restore him, provided he has no other specific remedy. (*R. v. Mayor of London*, 2 T. R. 177; *Lofft*, 551.)

A *mandamus* is sometimes granted where the Court has doubted whether it lay or not, in order to be better considered upon the return. (*R. v. Heathcote*, 10 Mod. 49; *R. v. Everett*, C. T. Hardw. 261.)

Where right doubtful.

But the Court will not grant a *mandamus* commanding justices to do that which may render them liable to an action, of which the event may be doubtful. (*R. v. Dayrell*, 1 B. & Cres. 485; 2 D. & R. 689; *R. v. Broderip*, 5 B. & Cres. 239; 7 D. & R. 681; *R. v. Robinson*, 2 Smith, 274; *R. v. Hughes*, 3 Ad. & Ell. 425; S. C. nom. *R. v. Justices of Suffolk*, 5 Nev. & M. 139; *R. v. Justices of Buckingham*, 2 N. & M. 68; *R. v. Hall*, 1 Har. & W. 83; *R. v. Justices of Somerset*, 1 H. & W. 82.)

In a recent case a *mandamus* to quash a rate was refused, where the parties who had been engaged in collecting the rate would be exposed to an action, and where the Court of Queen's Bench could not compel the sessions to decide in a particular way. (*Reg. v. Middlesex (Justices)*, 9 Ad. & E. 540.)

Where the subject matter in dispute is purely of a nominal kind, it will not be granted. (*Ex parte Lee*, 2 N. & P. 63; and *R. v. —*, Q. B. Easter Term, 1843.)

Where matter in dispute too trifling.

1. *Nature of Writ, etc.*

Where *certiorari* taken away.

Where the statute takes away the right to a *certiorari*, the Court of Queen's Bench will not indirectly bring the proceedings under review by a *mandamus*. (*R. v. Justices of West Riding of Yorkshire*, 3 *Nev. & M.* 86; 1 *Ad. & Ell.* 563; *S. C.* And see *R. v. Justices of West Riding of Yorkshire*, 5 *B. & Adol.* 1003; 2 *Nev. & M.* 390.)

Where a *quo warranto*, etc.

It seems that the Court will not hear an application for a *mandamus* where a rule for a *quo warranto* has been obtained (*R. v. Winchester (Mayor)*, 1 *Jurist*, 738); nor will they grant a rule in the alternative for a *mandamus* or a *quo warranto*. (*R. v. Leeds (Mayor)*, 11 *Ad. & Ell.* 512.)

Where merely to obtain opinion of Court.

In a case in which, by an agreement between the parties, an application was made for a *mandamus*, merely with a view to obtain the opinion of the Court, whether on the construction of a private Act, the proceeding by a *mandamus* was the proper one, the Court stopped the argument, and refused to give any decision. (*Reg. v. Blackwall Railway Directors*, 9 *Dowl.* 558.)

Must be a refusal to act by party against whom *mandamus* applied for.

A *mandamus* will not be granted unless it is clear that there has been a direct refusal to do that which it is the object of the *mandamus* to enforce, either in terms, or by circumstances which distinctly show an intention in the party to withhold from doing the act required. And where, upon being required to do a particular act, the party said he was ready to do it upon being indemnified, which the applicant refused to do, but afterwards took no further steps, by making a direct application or otherwise, to obtain an unconditional refusal:—It was held, that the refusal was not sufficient to warrant the Court in granting a *mandamus*. (*R. v. The Brecknock and Abergavenny Canal Company*, 4 *Nev. & M.* 871; 1 *Har. & W.* 279; see *R. v. Justices of Leicester*, 4 *B. & Cres.* 891; 7 *D. & R.* 370; *R. v. Trustees of Northleach Roads*, 5 *B. & Adol.* 978; *R. v. Frost*, 8 *Ad. & Ell.* 822; *R. v. Wilts and Berks Canal Navigation*, 3 *Adol. & Ellis.* 477.)

A *mandamus* was refused, where it appeared from an offer of the other side that it might be unnecessary. (*Anon.*, *Lofft*, 148.)

When cause is shown against a rule for a *mandamus*, the objection, that no sufficient demand and refusal appear, must be taken before the merits are discussed. (*Reg. v. Eastern Counties Railway Company*, 10 *Ad. & Ell.* 531.)

Time of application for.

The application for a *mandamus* ought to be made within a reasonable time. In *R. v. The Justices of Lancashire* (12 *East*, 366; and see *R. v. Stainforth and Keadby Canal Company*, 1 *M. & Sel.* 32), the Court refused a *mandamus* to make a rate to reimburse inhabitants, on whom a fine had been levied for non-repair of a highway, after an interval of eight years. (And see *R. v. Cambridgeshire Justices*, 1 *D. & R.* 325.)

Allotments were set out under an inclosure Act to a party claiming them, and possession given in or about 1817. There was no road to them, nor any access but through allotments made, or land sold under the Act to other persons. On motion in 1829 for a *mandamus* to the commissioners (who had not yet published their award) to set out an occupation road to the first-mentioned allotments, the Court held that the application came too late. (*R. v. Commissioners under the Cockermouth Inclosure Act*, 1 *B. & Adol.* 378.)

Affidavit for.

The writ is grounded on a suggestion, by the oath of the party injured, of his own right, and of the denial of justice by the Court or person complained of; whereupon, in order more fully to satisfy the Court that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest), directing the party complained of to show cause why a writ of *mandamus* should not issue. If he show no sufficient cause, the rule is made absolute, and the writ is issued, at first in the alternative, either to do the

Rule nisi.

Mandamus.

particular thing complained of or to signify some reason to the contrary: to which a return or answer must be made at a certain day. And if the inferior judge or other person to whom the writ is directed returns or signifies an insufficient reason, then there issues in the second place a *peremptory mandamus*, to do the thing absolutely; to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ.

If the inferior judge or other person make no return, or fail in his respect and obedience, he is punishable for his contempt by attachment.

Before the 9 Anne, c. 20, if the party to whom the writ was directed made a return sufficient in law, however false in fact, the Court could not award a *peremptory mandamus* till it was falsified in an action or information.

But now, by that statute, after requiring by sect. 1, that the return shall be made to the first writ of *mandamus*, sect. 2 enacts, that from and after the said first day of Trinity term, as often as in any of the cases aforesaid any writ of *mandamus* shall issue out of any of the said Courts and a return shall be made thereunto, it shall and may be lawful to and for the person or persons suing or prosecuting such writ of *mandamus*, to plead or to traverse all or any of the material facts contained within the said return; to which the person or persons making such return shall reply, take issue, or demur; and such further proceedings, and in such manner shall be had therein, for the determination thereof, as might have been had if the person or persons suing such writ had brought his or their action on the case for a false return; and if any issue shall be joined on such proceedings, the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried; and in case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by *nil dicit*, or for want of a replication or other pleading, he or they shall recover his or their damages and costs in such manner as he or they might have done in such action on the case as aforesaid; such costs and damages to be levied by *capias ad satisfaciendum*, *feri facias*, or *elegit*; and a *peremptory writ of mandamus* shall be granted without delay, for him or them for whom judgment shall be given, as might have been, if such return had been adjudged insufficient; and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

Sect. 3 provides, that if any damages shall be recovered by virtue of this Act against any such person or persons making such return to such writ, as aforesaid, he or they shall not be liable to be sued in any other action or suit, for the making such return; any law, usage, or custom to the contrary thereof in anywise notwithstanding.

Sect. 6. It shall and may be lawful to and for the said Courts respectively, to allow to such person or persons respectively, to whom any writ of *mandamus* shall be directed, or against whom any information in the nature of a *quo warranto*, in any of the cases aforesaid, shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively, to make a return, plead, reply, rejoin, or demur as to the said Courts respectively shall seem just and reasonable; anything herein contained to the contrary thereof in any wise notwithstanding.

Sect. 7. After the said first day of Trinity term, an Act made in the fourth year of her Majesty's reign, intituled "An Act for the Amendment of the Law, and the better Advancement of Justice," and all the statutes of jeofayles shall be extended to all writs of *mandamus*, and informations

1. Nature of Writ, etc.

Return.

Peremptory mandamus.

Attachment for non-return.

False return, or insufficient return.

As soon as the return is made, the prosecutor in such writ may plead, etc.,

to which the person returning may apply, etc.

How the proceedings shall be.

Persons against whom damages shall be recovered, not liable to be sued in other actions.

Court may allow time to return a *mandamus*, plead, reply, etc.

The Act 4 Anne, c. 16, and all the statutes of *jeofayles*, shall be extended to

1. *Nature of Writ, etc.* in nature of a *quo warranto*, and proceedings thereon, for any the matters in this Act mentioned,

writs of *mandamus*, etc.

The enactments of 9 Anne, c. 20, extended to all other writs of *mandamus*.

Damages and costs.

By the 1 Will. 4, c. 21, s. 3, reciting that "the provisions contained in the 9 Anne, c. 20, relating to the writs of *mandamus* therein mentioned, have been found useful and convenient, and the same ought to be extended to the proceeding on such other writs;" it is therefore enacted, "that the several enactments contained in the said statute, relating to the return to writs of *mandamus*, and the proceedings on such returns, and to the recovery of damages and costs, shall be, and the same are hereby extended and made applicable to all other writs of *mandamus*, and the proceedings thereon, except so far only as the same may be varied or altered by this Act."

1 Will. 4, c. 21. For protection of certain officers to whom writs of *mandamus* are directed.

By sect. 4, whereas writs of *mandamus* other than such as relate to the offices and franchises mentioned in or provided for by the said Act, made in the ninth year of the reign of Queen Anne, are sometimes issued to officers and other persons, commanding them to admit to offices, or do or perform other matters, in respect whereof the persons to whom such writs are directed claim no right or interest, or whose functions are merely ministerial in relation to such offices or matters; and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs, to which they may otherwise become liable; be it therefore enacted, that it shall be lawful for the Court to which application may be made for any writ of *mandamus* (other than such as relate to the said offices and franchises mentioned in or provided for by the said Act made in the reign of Queen Anne), if such Court shall see fit so to do, to make rules and orders, calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of costs of the application, and, upon the appearance of such other person, in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are or may be given or mentioned by or in any Act passed or to be passed during this present session of Parliament, for giving relief against adverse claims made upon persons having no interest in the subject of such claims: Provided always, that the return to be made to any such writ, and issues joined in fact or in law upon any traverse thereof, or upon any demurrer, shall be made and joined by and in the name of the person to whom such writ shall be directed; but, nevertheless, the same shall and may, if the Court shall think fit so to direct, be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules; and in that case, such other person shall be permitted to frame the return, and to conduct the subsequent proceedings, at his own expense; and in such case, if any judgment shall be given for or against the party suing such writ, such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made, and who shall have the like remedy for the recovery of costs, and enforcing the judgment, as the person to whom the writ shall have been directed might and would otherwise have had.

Proceedings not to abate by removal of officer.

By sect. 5, in case the return to any such writ shall, in pursuance of the authority given by this Act, be expressed to be made on behalf of any other person as aforesaid, the further proceedings on such writ shall not abate or be discontinued by the death or resignation of or removal from office of the person having made such return, but the same shall and may be continued and carried on in the name of such person; and if a peremptory writ shall be awarded, the same shall and may be directed to any successor in office or right to such person.

Sect. 6, "and for making some further provision for the payment of costs on applications for *mandamus*, be it further enacted that, in all cases of application for any writ of *mandamus* whatsoever, the costs of such application, whether the writ shall be granted or refused, and also the costs of the writ, if the same shall be issued and obeyed, shall be in the discretion of the Court, and the Court is hereby authorized to order and direct by whom and to whom the same shall be paid."

1. Nature of Writ, etc.

Costs to be in the discretion of the Court.

Before the passing of this Act, if the rule for a *mandamus* were made absolute, but no writ issued, no costs were given to either party; if the rule were discharged, the Court discharged it with or without costs, according to the particular circumstances of each case. (*R. v. Banks and another*, 3 *Bur.* 1452; *R. v. Bishop of Chester*, 1 *T. R.* 396.) And if the writ issued and were obeyed, no costs were allowed, except in cases under the 12 Geo. 3, c. 21, which applied only to corporate offices. (*Dowl. Stat.* 41, n.) Since this enactment the costs are entirely in the discretion of the Court. (1 *Ad. & Ell.* 299, n.)

Decisions as to costs.

But it is well settled, as a general rule, that where a party appears in opposition to a *mandamus*, and supports an objection which turns out to be untenable, he must pay the costs of the *mandamus*, although he is supporting the decision of the Court below. (*R. v. Justices of Surrey*, 19 *L. J.*, 171 *M. C.* See also 9 *Q. B.* 37, 41.)

The statute applies to all writs of *mandamus*, and entitles prosecutors recovering on a traverse to damages and costs, whether or not they are so interested as to have been entitled to sue in case for a false return. (*R. v. Fall*, 1 *Q. B.* 636; 1 *Gale & D.* 117, *S. C.*)

It is a general rule, that unsuccessful applications against magistrates are discharged, with costs. (*Reg. v. Wilts Justices*, 8 *Dowl. P. C.* 717.)

And where magistrates are present, but take no part in the proceedings, the application against them for a *mandamus* will be discharged, with costs. (*Ib.*)

Where public functionaries, such as a clergyman or schoolmaster, endowed under an Act of Parliament, are obliged to come before the Court for a *mandamus* to obtain their dues under an Act of Parliament, the Court will award costs to them. (*R. v. St. Saviour's, Southwark*, 3 *N. & P.* 354; *Ib.*, 2 *Jur.* 565.)

Where a party, required by law to pronounce a decision on certain points, is brought before the Court by a motion impugning such decision, the general rule is, that he shall have costs, if the application fails. (*Reg. v. Bridgnorth (Mayor)*, 10 *Ad. & Ell.* 66.)

The Court will grant costs to the prosecutors, although there may have been doubtful questions of law raised on the return. (*Reg. v. St. Saviour's, Southwark (Churchwardens, etc.)*, 3 *Nev. & Per.* 345.)

And although the Court had refused to quash the return to the *mandamus*. (*Reg. v. Harnham Roads (Trustees)*, 5 *Jur.* 408.)

Upon a *mandamus* directing the mayor to insert the name of a person upon the burgess roll in pursuance of sect. 24 of the 7 Will. 4 and 1 Vict. c. 78, which gives the Court a discretion as to costs, the Court refused to order them in favour of the prosecutor, there being no reason to impute improper conduct to the mayor. (*Reg. v. Lichfield (Mayor)*, 6 *Jur.* 624.)

On judgment on the return to a writ of *mandamus*, the successful party is entitled, as of course, to costs, unless the Court shall otherwise direct. (*Reg. v. Newbury (Mayor, etc.)*, 2 *Gale & D.* 109.)

Where a rule for a *mandamus* is made absolute, the costs of the application must be made the subject of a separate application, and will not be considered by the Court on disposing of the rule. (*Reg. v. Satop (Justices)*, 6 *Dowl. P. C.* 28.)

Mode of obtaining.

By *Reg. Gen. T. T.* 1867 (7 *B. & S.* 399), application for costs of a *mandamus* must be made within two terms of the obeying of the writ. (And see *Reg. v. Kent*, 6 *B. & S.* 394; 36 *L. J.*, *M. C.* 130.)

2. *Concerning Justices of the Peace, etc.*

Affidavit for.

When ordered against particular parties.

Amount of costs.

Security for costs.

Upon a motion by the prosecutor, of a *mandamus* for his costs, the rule should be drawn up on reading all the affidavits upon which he obtained the *mandamus*, and which he intends to use: unless so drawn up the Court will not refer for the guidance of their discretion to the affidavits filed in support of the application for the *mandamus*. (*Reg. v. Peter House College (Master, etc.)*, 1 Q. B. 314; 5 Jur. 408, S. C., overruling the case of *R. v. Kirke*, 5 B. & Adol. 1089.)

Where a return to a *mandamus*, showing cause for disobedience to the writ, is made by the inhabitants of a parish, if the return is quashed, the Court, in granting costs, will ascertain which of the inhabitants joined in making the return, and make the rule for costs absolute against them. (*R. v. St. Saviour's*, 3 N. & P. 345.)

The party, whether prosecutor or defendant, succeeding on an issue joined, upon a traverse of a return to a *mandamus*, is by virtue of the above enactment entitled to the costs of the application for the writ, as well as the costs of the subsequent proceedings, without an express order of the Court. (*Reg. v. Kelk*, 1 Gale & D. 127; 1 Q. B. 660, S. C.)

A *mandamus* was directed to a commissioner under a drainage Act (36 Geo. 3, c. 99), commanding him to swear into office a person claiming to have been appointed such commissioner. He returned, that the claimant was not duly appointed; and obtained judgment upon issue joined on a traverse of such return. By sect. 52 of the Act, if judgment is given against the plaintiff in any action, suit, or information, commenced or prosecuted against any person for anything done in pursuance of the Act, such person is to have treble costs:—Held, that the judgment for the defendant in such proceeding by *mandamus* did not entitle him to treble costs, as neither his refusal to swear in the claimant, nor the making the return to the writ, was a thing done in pursuance of the Act. (*Id.*)

The prosecutor of a writ of *mandamus* to admit him a freeman of a borough traversed three matters stated in the return; on the trial, two of the issues were found for him, and the third for the defendants, which entitled them to the general judgment:—It was held, that the prosecutor was not entitled to the costs of the issues found for him, either under the 4 & 5 Anne, c. 16, s. 5, or the 9 Anne, c. 20, s. 2; or under the *Reg. Gen. H. T.* 2 Will. 4, Reg. 74, or H. T. 4 Will. 4, Reg. 7. (*Reg. v. Malmesbury (Mayor, etc.)*, 6 Jur. 1107.)

The Court will not compel a relator in a *mandamus* to give security for costs, he being interested in the matter in question, on the ground of his poverty, or that other persons had induced him to apply for the writ. (*Reg. v. Malmesbury (Mayor)*, 9 Dowl. 359; 5 Jur. 366, S. C.)

By the 6 & 7 Vict. c. 67, the prosecutor may demur to the return, and thereupon the same proceedings may be had as upon a demurrer in a personal action, and any party aggrieved by the judgment of the Court may sue out a writ of error for the purpose of reversing the same.

By sect. 3 no action, suit, or other proceeding is to be brought against any person for anything done in obedience to any writ of *mandamus*.

II. Concerning Justices of the Peace, Sessions, etc., in general.

Mandamus to sessions, etc.

We have already considered as to when a *mandamus* will be granted against justices of the peace; see "*Justices*," ante, 150. We have also just seen, ante, 809, that the Court will not grant the writ commanding

justices to do that which may render them liable to an action, the result of which may be doubtful.

As to when it will be granted to the sessions, see tits. "*Appeal*," Vol. I.; "*Sessions*," Vol. V.

A magistrate's clerk has no permanent interest in his office, and if he be dismissed without cause, no *mandamus* lies to restore him. (*Ex parte Sandys*, 1 N. & M. 591.)

3. *Concerning Overseers, etc.*

Appointment, etc., of overseers, etc.

To restore overseers.

To overseers to make out a list of constables.

Clerk or treasurer to guardians.

Poor and other rates.

III. Concerning Overseers and Guardians, and concerning Poor and Parish Matters.

A *mandamus* in general lies to compel the appointment of overseers.

To obtain a *mandamus* to justices to appoint overseers, it must be expressly sworn that the place in question actually is, or is reputed to be, a vill. (*R. v. Bedfordshire Justices*, Cald. 157; *R. v. Peterborough Justices*, Cald. 238, S. P.)

A *mandamus* lies to make a new appointment of overseers, when that made was on a Sunday. (*Anon.*, Lofft. 618; *S. C. nom. R. v. Bridge-water Overseers*, Cowp. 139.)

So it lies to appoint overseers in a hamlet where there were never any before. (*R. v. Westmoreland Justices*, 1 Wils. 138.)

Where a parish consists of several townships, some of which maintain their own poor, and have immemorially had overseers separately appointed, the Court will grant a *mandamus* for the separate appointment of overseers for the remaining townships. (*R. v. Horton*, 1 T. R. 374; and see *R. v. Newell*, 4 T. R. 266.)

The principle of the "Poor Law Amendment Act," 4 & 5 Will. 4, c. 76, with reference to the formation of unions of parishes for the relief of the poor, does not interfere with the directions of the Court in granting a *mandamus* to justices to appoint overseers for a township or hamlet, in a parish, pursuant to the 13 & 14 Car. 2, c. 12, s. 21, on the ground that the parish had not enjoyed, and could not enjoy, the benefit of the 43 Eliz. c. 2. (*Reg. v. Worcestershire Justices*, 4 Jur. 1009.)

In a recent case, a rule for a *mandamus* to churchwardens to swear in overseers was granted absolute in the first instance. (*Reg. v. Manchester Churchwardens*, 7 Dowl. 707.)

Sometimes a *mandamus* will lie to restore the overseers, after they have been duly appointed, and afterwards improperly dismissed; but it lies not to restore the clerk and treasurer of the guardians of the poor of St. Nicholas, Rochester. (*R. v. Guardians of St. Nicholas, Rochester*, 4 M. & Sel. 324.)

A return to a *mandamus* to restore, stating that the prosecutor "was not duly elected, admitted, and sworn," is bad. (*R. v. Lyme Regis (Mayor, etc.)*, 1 Dougl. 79.)

Where justices have issued their precept under the 5 & 6 Vict. c. 109, s. 2, to overseers to make out a list of men qualified and liable to serve as constables, and the overseers disobey the precept, a *mandamus* will lie to enforce it. (*Reg. v. North Bierley*, 27 L. J., M. C. 275.)

In a recent case the Court refused a *mandamus* to a board of guardians to admit a person as their clerk, who complained that the person filling the office had been unduly elected by the votes of guardians who were themselves not properly elected. (*Reg. v. Dolgelly Union (Guardians)*, 3 Nev. & Per. 542; 8 Ad. & Ell. 561, S. C.) And in the above case of *R. v. St. Nicholas*, they refused to restore a clerk and treasurer. And see *Reg. v. St. Martin*, 20 L. J., Q. B. 423.

A *mandamus* will not be granted to compel overseers of the poor to

3. *Concerning Overseers, etc.*

make a rate, without first appealing to the sessions (*R. v. Guardians, etc., of Canterbury*, 4 Burr. 2290; 1 W. Black. 667, S. C.), nor to collect a rate. (*R. v. Norwich Overseers*, Nolan, 28.)

But in general a *mandamus* lies to overseers to make a poor rate. (*R. v. Statford, Comb.* 419.)

But not to make an equal rate. (*R. v. Freshford*, 1 Andr. 25.)

Nor to insert particular persons in a rate. (*R. v. Wesbly*, 2 Stra. 1259.)

Nor to compel overseers, etc., to make a rate to reimburse the old ones (*R. v. Rotherhithe*, 8 Mod. 339); unless the overseer has advanced his own money. (*R. v. Littleport*, 6 Mod. 97.)

Where a parish contained within itself a borough not co-extensive with it, and the mayor of the borough, on a return to a *mandamus* to allow a poor rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since the 43 Eliz. c. 2, of appointing separate churchwardens and overseers, and of making separate rates for the borough, and for those parts of the parish which lay without the borough:—It was holden, that such custom was invalid, and the return was quashed accordingly. (*R. v. Gordon*, 1 B. & Ald. 524.)

A *mandamus* will be awarded in the first instance to justices to allow and sign a poor rate. (*R. v. Fisher*, Say. 160; *R. v. The Mayor of Worcester*, C. T. Hard. 128.)

The "Parochial Assessment Act," 6 & 7 Will. 4, c. 96, does not give to justices a judicial authority in allowing a poor rate, nor does it intend that the valuation made under its authority should be conclusive; therefore, where the overseers in making such a rate, had departed from that valuation, though no alteration had taken place in the value of the premises rated, the Court granted a *mandamus* to the justices to allow the rate. (*Reg. v. Yarborough (Earl)*, 4 Jur. 627.)

The Court refused to grant a *mandamus* to justices to rate a parish within their jurisdiction, in aid of another parish having exclusive jurisdiction. (*R. v. Holbeche*, 4 T. R. 778.)

A local Act gave power to commissioners to raise money for paving, lighting, and watching a town, by rating and assessing the proprietors of houses according to the value at which the houses were taxed to the poor. It also empowered them to assess and levy a rate on certain proprietors for the purpose of certain improvements, such rate to be levied and assessed in the same manner as the other rates. In default of payment, a justice was authorized to issue a distress warrant. The Act also provided, that in case any person thought himself aggrieved by any rate or assessment, he might appeal to the commissioners, who were authorized to give relief; and further, that any one who thought himself aggrieved by anything done in pursuance of the Act might appeal to the quarter sessions. The commissioners assessed a proprietor to a rate levied for the purpose of the improvements, at an annual value above that at which he was assessed to the poor:—Held, *Taunton, J., dissentiente*, that, on his refusing to pay, a justice might be required by *mandamus* to issue a distress warrant, the proprietor not having appealed. (*R. v. Trecothick and others*, 2 Ad. & Ell. 405.)

The 43 Geo. 3, c. 110, s. 2, which provides that a twentieth part at least of the sums borrowed by visitors and guardians of the poor, under the 22 Geo. 3, c. 83, s. 20, shall be paid off or provided for every year, does not extinguish the debt in cases where no such payment or provision has been made for twenty years. (*R. v. Carpenter*, 6 Ad. & Ell. 794.) And, on the application of a party who had advanced the money since the passing of the 43 Geo. 3, c. 110, and more than twenty years before the application, where the parish had not paid or provided for any part of the principal, and some interest was due, the Court granted a *mandamus* to the guardians, churchwarden, and overseer, to pay the principal and interest. But they refused to grant a *mandamus* to make a rate for payment of the principal and interest. (*Ib.*)

The Court will grant a *mandamus* to commissioners intrusted by Act of Parliament with the regulation of the expenditure of a parish, to compel them to levy a rate for the purpose of paying off a sum borrowed on the rates by former commissioners, without pledging their personal responsibility, where the liabilities created under the former Act are reserved by the new Act, although the latter directs that the commissioners shall be sued in the name of their clerk, and no interest has been paid within twenty years. (*R. v. St. Paul, Shadwell (Commissioners)*, 1 *M. & R.* 591; 1 *M. & R. M. C.* 226, *S. C.*)

3. Concerning Overseers, etc.

If one parish officer apply for a *mandamus* against another, to concur in a rate, the writ must be against the applicant as well as against the other. (*Anon.*, 2 *Chit.* 254.)

On appeal against a poor rate, on the ground that the appellant was overrated, the practice at the sessions required the appellant to begin by proving his case, which the appellant refusing to do, the appeal was dismissed; the Court refused a *mandamus* to the sessions, to rehear the appeal on this objection. (*R. v. Suffolk Justices*, 6 *M. & Sel.* 57.)

A *mandamus* lies to compel justices to summon a person for not paying poor rates. (*Anon.*, 2 *Chit.* 257.)

Enforcing payment of rates.

Also, to make a warrant of distress for the poor rate. (*St. Luke's Parish v. Middlesex Justices*, 1 *Wils.* 133.) So, to justices to make a distress for a poor rate assessed upon a bishop. (*R. v. Middlesex Justices*, 2 *Lord Kenyon*, 163.)

The Court granted a rule *nisi* for a *mandamus* to pay poor rates, though the defendants had distrainable goods, it being sworn that the goods were fraudulently leased, and that the parish would be driven to try an action on the ground of the fraud. (*R. v. Margate Harbour Company*, 2 *Chit.* 256.)

But the Court will not grant a *mandamus* to magistrates to order them to issue a warrant of distress to levy a poor rate on certain persons who have refused to pay, unless those persons have been previously summoned by the justices; but they will grant a *mandamus* to them, the justices, to receive complaints, etc., against the persons who refused to pay, etc., and to proceed thereupon to levy, etc. (*R. v. Benn*, 6 *T. R.* 198.)

A writ of *mandamus*, directed to a corporation, commanding them to pay a poor rate to the overseers, omitted to state that the defendants had no effects on which a distress could be levied:—Held a fatal objection in substance to the writ, and might be taken after the return, or at any time before a peremptory *mandamus* issued. And it is doubtful whether a *mandamus* will lie in such a case. (*R. v. Margate Pier Company*, 3 *B. & Ald.* 220.)

The Court will not grant a *mandamus* commanding the commissioners of woods and forests to pay a poor rate in respect of lands held by them under the crown. (*Ex parte Reeve*, 5 *Dowl.* 668.)

A *mandamus* will lie against the old overseers, to compel them to deliver their public books and papers to their successors. (*R. v. Bletshew*, 1 *Bot. P. L.* 315; *S. P. R. v. Clapham*, 1 *Wils.* 305. And see *Anon.*, 2 *Chit.* 255.)

Overseers' accounts.

So it goes, of course, to justices of peace to swear overseers to their accounts, according to the 17 Geo. 2, c. 38. (*R. v. Middlesex Justices*, 1 *Wils.* 125.)

Where ex-overseers of the poor of the parish of St. J. delivered to their successors a certified balance-sheet of the gross sums received and disbursed during the year in which they were in office, without any other voucher or document:—It was held, that the delivery of such balance-sheet was not a sufficient compliance with the statute 17 Geo. 2, c. 38; and the Court ordered a *mandamus* to issue to the justices of W., to hear and determine a complaint against the ex-overseers of the parish of St. J., for not having properly accounted for the money received and

3. *Concerning Overseers, etc.*

paid by them pursuant to the provisions of that statute. (*R. v. Worcestershire Justices*, 3 D. & R. 299.)

By the 50 Geo. 3, c. 69, s. 1, it is enacted that churchwardens and overseers shall, within fourteen days after other overseers shall be nominated to succeed them, deliver on oath, before two justices, an account in writing of all sums received, etc., by them during their year of office; and such justices are authorized and empowered, if they should so think fit, to examine into the matter of such accounts, and disallow unfounded and reduce exorbitant items:—Held, that these words rendered it imperative on the justices to examine (and, if necessary, to disallow or reduce) the accounts, when objections were made to any part of them by any rated inhabitant at the special sessions; and where the justices had signed and allowed such accounts, after verification of them by the churchwardens and overseers, without examining into them, although certain rated inhabitants objected to certain items, the Court granted a *mandamus* to them to examine and allow the accounts. (*Reg. v. Cambridge Justices*, 8 Dowl. 89.)

By the 23 Geo. 3, c. 44, regulating the affairs of the poor of Birmingham, the guardians and overseers thereby appointed are directed to adjust their accounts at quarterly meetings of their own body; and an appeal is given to the sessions in respect of all matters done by virtue thereof; but the statute is silent as to any submission of the overseers' and guardians' accounts to the magistrates as required by 50 Geo. 3, c. 49:—It was held, however, that a *mandamus* would lie to the guardians and overseers to pass their accounts in the manner required by that statute. (*R. v. Warwickshire Justices*, 2 D. & R. 299.)

If the overseers after allowance of their accounts by two justices at special sessions, and an order by the justices to pay over the balance to their successors, which order is confirmed on appeal, refuse to pay such balance, the two justices may issue their warrant to levy the same under the 50 Geo. 3, c. 49, upon the application of one of the succeeding overseers, although the rest of the overseers refuse to concur in such application; therefore, where the justices refused to issue such warrant upon such application, the Court granted a *mandamus*. (*R. v. Pascoe*, 2 M. & Sel. 343.)

A *mandamus* was issued to receive an appeal against overseers' accounts, though the allowance had not been previously made or examined at a special sessions, pursuant to the 50 Geo. 3, c. 49, s. 1. (*R. v. Colchester Justices*, 1 D. & R. 146; 5 B. & Ald. 535, S. C.)

The 18 Geo. 3, c. 25, s. 5, gives an appeal to the sessions against the allowance, by two justices, of constables' accounts, "*in case the overseer or overseers shall find that the parish or township is aggrieved thereby;*" but the right of appeal cannot be exercised by one overseer without the consent of the majority. Where, therefore, seven wished to allow constables' accounts against the opinion of an eighth and a majority of the lay payers, and two justices afterwards allowed the accounts:—Held, that the single overseer could not appeal against the allowance in his own name; and the Court refused a *mandamus* to the sessions to hear the appeal. (*R. v. Manchester Justices*, 1 D. & R. 454.)

If, on an appeal against overseers' accounts, the sessions disallow some of the items, and do not order the overseers to pay the balance to their successors, two justices out of sessions may enforce payment of the balance; and if they refuse to interfere, the Court of Queen's Bench will grant a *mandamus* to compel them to hear the complaint. (*R. v. Carter*, 4 T. R. 246.)

The guardians of the poor, under an Act of Parliament, ordered the treasurer to pay a sum of money for a purpose different from those mentioned in the Act, against which an appeal was entered at the sessions, where that sum was disallowed in the account, and the treasurer, who had paid it, was ordered to repay it to the succeeding treasurer; the Court refused to grant a *mandamus* to compel the late treasurer to pay

over the money according to the order of sessions, because he was a ministerial officer, and bound to obey the order of the guardians. (*R. v. Shaw*, 5 T. R. 549.)

3. *Concerning Overseers, etc.*

A *mandamus* will lie to parish officers for the repayment of the costs of having a survey of the parish made for the purposes of the poor rates under the 6 & 7 Will. 4, c. 96, s. 3. (*Reg. v. Hurstbourne Tarrant*, 27 L. J., M. C. 214.)

The Court will not grant a *mandamus* to the justices at sessions to rehear an appeal against an order of removal after judgment given by them, and entered by the clerk of the peace, for quashing the order, upon the ground that the justices at sessions were divided in opinion, and that the judgment was entered by mistake, instead of an adjournment of the appeal. (*R. v. Leicestershire Justices*, 1 M. & Sel. 442.)

Removal of pauper.

So, where the justices were divided, and the sessions, thinking it lay on the respondent parish to establish their case to the satisfaction of a majority of the Court, quashed the order of removal, a *mandamus* was refused. (*R. v. Monmouthshire Justices*, 7 D. & R. 334; 4 B. & C. 844, S. C.) *Quære*, if the sessions ought to have adjourned instead of quashing the order. (*Id.* See tit. "Sessions," Vol. V.)

A *mandamus* will not lie to compel overseers to receive a pauper under an order of removal, the proper remedy being by indictment. (*Ex parte Downton*, 27 L. J., M. C. 281; 8 El. & Bl. 856.)

It will not be granted to justices to make an order of maintenance on a particular parish. (*R. v. Middlesex Justices*, 4 B. & Ald. 298. And see *R. v. Eye Corporation*, 4 B. & Ald. 271; *R. v. Truro (Mayor)*, 3 B. & Ald. 590.)

Order of maintenance.

It has been granted to justices out of sessions to examine the mother of a bastard, and grant a summons against the putative father. (*R. v. Martyr*, 13 East, 55.)

In bastardy cases.

So to justices out of sessions to hear and decide upon a charge of vagrancy. (*R. v. Justices of Cumberland*, 4 Ad. & Ell. 695.)

Vagrants.

A parishioner has no right to inspect parish books for the purpose of gaining information which may be useful to him, with a view to support his claim to an estate in the parish; and, therefore, the Court refused to grant a *mandamus* for that purpose. (*R. v. Smallpiece*, 2 Chit. 288.)

Inspection of books, etc.

And to obtain a *mandamus* for inspection, it is necessary for the party moving for it to show that he has *some interest* in the documents to be examined; thus, in an application for inspection of parish books, he must show that he is a parishioner. (*Burrell v. Nicholson*, 3 B. & Adol. 649.)

A *mandamus* was granted, commanding the justices and clerk of the peace of a borough to permit the attorney, on behalf of several persons who contributed to the county rates, to inspect and take copies of the last two rates made by the justices, and all orders made for the expenditure of the same, and the several orders of sessions made thereon, and other proceedings and documents relating thereto. (*R. v. Leicester Justices*, 7 D. & R. 370; 4 B. & C. 891, S. C. See *R. v. Justices of Nottingham*, *post*, 822.)

But before such writ can be obtained, an application for such inspection must be made to the justices assembled at quarter sessions. (*Id. ante*, 810.)

Where, under the "Nuisances Removal Act" (18 & 19 Vict. c. 121), the sanitary inspector had obtained an order of justices for the abatement of a nuisance, the Court refused to compel the local authority by *mandamus* to enforce the order. (*Ex parte Bassett*, 7 El. & Bl. 280; S. C., *nom. In re Local Board of Ham*, 26 L. J., M. C. 64.)

4. Concern-
ing Church-
wardens, etc.

IV. Concerning Churchwardens, Churches, Church Rates, and Meeting Houses.

Churchwardens.

The Court made a rule absolute, in the first instance, for a *mandamus* to an archdeacon to swear in the churchwardens duly elected, where there is no rival candidate, and no reason assigned for the refusal to administer the oath. (*R. v. Lichfield and Coventry*, 5 N. & M. 42; 1 H. & W. 463, S. C.; *Anon.*, 2 Chit. 254. And see *Ex parte Penruddock*, 1 H. & W. 347.)

The validity of a resolution of a vestry to close the poll for the election of churchwardens at a particular hour is a fit question to be tried upon a *mandamus*, (*R. v. Winchester (Bishop)*, 7 East, 578.)

Where a rector appointed as his churchwarden a person who was not a parishioner, it was held that a *mandamus* to him to appoint a churchwarden was the proper process by which to question the validity of the appointment. (*In re Barlow*, 30 L. J., Q. B. 271.)

Church and
other rates.

A *mandamus* will not lie to churchwardens to make a church rate (*R. v. Wilson*, 5 D. & R. 602; *R. v. Thomas*, 6 Jurist, 1122); because it is a subject of ecclesiastical jurisdiction. (*R. v. St. Peter, Thetford*, 5 T. R. 364. See further, tit. "Church," Vol. I.) Nor to appoint an organist to the parish church, although there has always been such an office, and a yearly salary has always been paid out of the church rates. (*Reg. v. St. Stephen's*, 14 L. J., Q. B. 34; S. C., nom. *Ex parte Le Cren*, 2 D. & L. 571.)

But although a *mandamus* does not lie to the churchwardens to make a church rate, yet it lies to the churchwardens, etc., of two united parishes, under the 10 Anne, c. 11, to assemble a meeting pursuant to sect. 24 for the purpose of agreeing upon and ascertaining the moneys and rates to be assessed for the repair of the church of one of those parishes. (*R. v. St. Margaret and St. John*, 4 M. & Sel. 250.)

When the making a church rate is enjoined on a special vestry by Act of Parliament, a colourable adjournment for the purpose of delay is equivalent to a distinct refusal; and, therefore, when a vestry was assembled on the 8th of June, to consider a requisition of the churchwardens to make a church rate, and they had notice that, on refusal, a *mandamus* would be applied for, and at the meeting a resolution was passed that the churchwardens ought to supply an estimate of the expenses required, and the vestry adjourned for ten days, the Court thought this a colourable adjournment, and awarded a *mandamus*. (*Reg. v. St. Margaret's, Leicester, Select Vestry*, 1 Per. & D. 116.)

Mandamus to churchwardens to raise a rate to pay principal and interest of money borrowed on the credit of parish and church rates, under the "Church Building Acts," 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134. Return, that since the security was given, the lender, who was the prosecutor, had become bankrupt. Plea, that the prosecutor had lent the money, as trustee for a party named, out of the money vested in him as trustee, in which he had no interest except as trustee. On demurrer, assigning for cause that the nature of the trust did not appear:—Held good. (*Reg. v. Brancaster Churchwardens*, 7 Ad. & Ell. 458; 2 Nev. & Per. 580, S. C.)

A rate to reimburse churchwardens such sums as they had expended or might thereafter expend on the parish church, would be bad on the face of it, as in part retrospective; and, therefore, the Court would not grant a *mandamus* to the chapelwardens of a township within the parish, to make such a rate for raising their accustomed proportion of the whole; and their refusal to make such a rate, when demanded, applying as well to the form as to the substance of the demand, the Court would not grant the *mandamus* to raise the money in the common form of such a rate

prospectively, out of which the churchwardens might repay themselves. (*R. v. Haworth Chapelwardens*, 12 *East*, 556.)

A *mandamus* will not lie to compel churchwardens to permit a rate-payer to inspect their accounts, unless some special and public ground is shown for such inspection. (*R. v. Clear*, 4 *B. & C.* 899; *Ex parte Briggs*, 28 *L. J.*, *Q. B.* 272.)

A *mandamus* lies to justices to proceed against a quaker for a church rate. (*R. v. Freeman*, 2 *Ld. Ken.* 19.)

A *mandamus* lies to a rector to appoint a parish clerk. (*R. v. St. Ann's, Soho*, 3 *Burr.* 1877.) So it lies to a clergyman to replace a parish clerk; and the affidavit should state that such clerk was appointed for life, although it is not absolutely necessary. (*Anon.*, 2 *Chit.* 254.) So to restore a parish clerk. (*R. v. Warren*, 1 *Cowp.* 370.) But not to restore one to the office of deputy parish clerk. (*Anon.*, *Lofft*, 434.)

Parish clerk.

A *mandamus* does not lie to admit a vestry clerk, for he has no lasting interest in his office. (*R. v. Croydon Churchwardens*, 5 *T. R.* 713.) Nor to churchwardens to deliver a vestry book to the vestry clerk. (*Anon.*, 2 *Chit.* 255.) Nor to admit or restore a clerk or treasurer to the guardians of the poor (*ante*, 815.) But it lies to admit a clerk of trustees under the turnpike Acts. (*R. v. Cheshunt Roads*, 5 *B. & Adol.* 438.)

Vestry clerk, etc.

Clerk to turnpike roads.

Burial in the parish churchyard is a common-law right inherent in the parishioners, but the *mode* of burial is of ecclesiastical cognizance; and, therefore, the Court refused a *mandamus* to inter the body of a parishioner in an iron coffin. (*R. v. Coleridge*, 2 *B. & Ald.* 806; 1 *Chit.* 588.) So to bury in a vault, or particular place in a churchyard. (*Ex parte Blackmore*, 1 *B. & Adol.* 122.) See as to a *mandamus* to a gaoler to deliver up a dead body, *infra*.

Burial.

A *mandamus* lies to deliver up the keys of a church. (*Anon.*, 2 *Chit.* 255.)

Keys of church.

A *mandamus* will lie to register and certify dissenting meeting-houses. (*R. v. Derby Justices*, 4 *Burr.* 1991; 1 *W. Bla.* 606, *S. C.*)

Dissenting-meeting-house.

So also to trustees of a meeting-house to admit a dissenting teacher. (*R. v. Barker*, 3 *Burr.* 1265; 1 *W. Bla.* 352, *S. C.*)

So it lies to the sessions to administer the oaths to a teacher of Protestant dissenters, and allow him to make and subscribe the requisite declarations. (*R. v. Gloucestershire Justices*, 15 *East*, 577.)

But it will not lie to justices of the peace, commanding them to suffer a dissenting minister quietly to preach in a particular meeting-house. (*Peat's case*, 6 *Mod.* 229.)

V. Concerning Gaolers and Constables.

A *mandamus* was granted commanding the lord of a manor to hold a Court leet for the purpose of appointing a high constable of a hundred, though the day on which the Court had been usually held for sixty years past had gone by, it not being distinctly sworn that the Court was held on that particular day by prescription. (*R. v. Milverton*, (*Lord of Manor*), 3 *Ad. & Ell.* 284; 1 *Har. & Woll.* 282, *S. C.*)

To appoint a high constable.

A *mandamus* will not lie to compel a constable to pay money levied by him under a distress and sale, and who, under an idea of its having been erroneous, had restored the money to the purchaser, and the goods to the owner. (*Morley v. Stacker*, 6 *Mod.* 83.)

To compel a constable to pay money levied.

A peremptory *mandamus* was granted in the first instance, commanding a gaoler to give up for burial the body of a debtor dead within the

To a gaoler to give up a dead body.

6. *Concerning County Treasurers and others.*

To award compensation in lieu of gaol fees.

gaol, it being sworn that he refused to do so until a certain sum, claimed as a debt owing by the deceased for maintenance, were paid. (*In re Wakefield (Bailliff of)*, 1 *Gale & D.* 566.)

A *mandamus* has been granted to the justices at sessions for Middlesex as well as other counties, to award compensation to the sheriff in lieu of gaol fees under the 55 Geo. 3, c. 50, s. 10, the Court holding that those justices had authority by the Act to do so. (*R. v. Justices of Middlesex*, 3 *B. & Adol.* 100.)

VI. Concerning County Treasurers and Others.

County treasurer.

The Court will not grant a *mandamus* to make a new election of a county treasurer on the ground that one of the justices, who had voted at the election, had not taken the qualification oath required by statute 18 Geo. 2, c. 20, prior thereto; for the acts of such justice are not void, although he may be liable to penalties. (*R. v. Herefordshire Justices*, 1 *Chit.* 700.)

Nor will they grant it to a ministerial officer, such as the treasurer of a county, to obey an order of the Court of quarter sessions, unless the officer is merely a nominal party (*Reg. v. Wood Ditton*, 18 *L. J., M. C.* 218); the proper remedy, in case of his refusal to obey such order, is by indictment. (*R. v. Bristow*, 6 *T. R.* 168; *R. v. Surrey Treasurer*, 1 *Chit. Rep.* 650, *S. P.* (And see *R. v. Johnson*, 4 *M. & Sel.* 515.)

Nor to a treasurer of a county to reimburse constables money expended by them in conveying rogues, vagabonds, and disorderly persons. (*R. v. Erle*, 2 *Burr.* 1197.)

But it will lie to compel the treasurer of a district to pay the expenses of a prosecution for felony or misdemeanour in obedience to the order of the Court of assize, under the 7 Geo. 4, c. 64, s. 23. (*Reg. v. Oswestry*, 12 *Q. B.* 239; *S. C.*, *Reg. v. Hayward*, 17 *L. J., Q. B.* 223, overruling *R. v. Jeyes*, 5 *Nev. & M.* 121; 3 *Adol. & Ell.* 416, *S. C.* And see *Reg. v. Clarke*, 5 *Q. B.* 887.)

The *St. Katherine Dock Company* were incorporated by Act of Parliament, which directed that all actions against the company should be prosecuted against the treasurer or a director for the time being, but that the body or goods, lands, etc., of such treasurer or director should not, by reason of his being defendant in such action, be liable to execution. An action having been brought by T. C. against the treasurer as such, and another by the company in the name of the treasurer against T. C., all matters in difference were referred to an arbitrator, who awarded that T. C. had cause of action against the defendant as such treasurer for a certain sum, and directed that the treasurer should pay T. C. that sum on demand, and as to the other suit, he awarded that the treasurer as such had no cause of action, and ordered him as such treasurer to pay T. C. the costs on demand. It was held that a *mandamus* would lie to the treasurer and directors, commanding them to pay the sums awarded. (*R. v. St. Katherine Dock Company*, 1 *Nev. & M.* 121; 4 *B. & Adol.* 360.)

To inspect county rates, etc.

A *mandamus* will not go to inspect the accounts relating to county rates on an application made to the Court of quarter sessions for the inspection, whilst the Court was in actual discussion upon the accounts. (*R. v. The Justices of Nottingham*, 1 *Harr. & W.* 318. See *R. v. Justices of Leicester*, 7 *D. & R.* 370; 4 *B. & Cres.* 891; *S. C. ante*, 810, 819.)

Quære, whether a *mandamus* will go to justices to direct an order to the clerk of the peace to suffer ratepayers to take copies of assessments of county rates, and orders of sessions relative to county rates, and of all payments made thereout, and to the clerk of the peace to produce

his accounts of the expenditure of the county rates, together with his vouchers for the same, the object of the application being to bring into question the legality of some of the payments. (*R. v. The Justices of Staffordshire*, 1 *Harr. & W.* 277.)

Manor.

A *mandamus* has been granted to a treasurer of a county, to deposit with the clerk of the peace, in pursuance of the 12 Geo. 2, c. 29, ss. 7, 8, books containing entries of the county expenditure, although the receipts, tradesmen's bills, the gaoler's accounts, and copies of the county rate, had been already deposited with the clerk of the peace, and the books contain the discharges of the treasurer, and the discharges of the former treasurer by the justices in session. (*Rex v. Payn*, 1 *Nev. & Per.* 524.)

To deposit with clerk of peace books of expenditure, etc.

The Court has no power to issue a *mandamus* to the registrar of births, etc., under the 6 & 7 Will. 4, c. 86, commanding him to erase the entry of a birth, it appearing that the child was supposititious, and that the entry had been made for fraudulent purposes. (*Ex parte Stanford*, 1 *Gale & D.* 428; *S. C.*, *nom. In re the Registrar of Brixton*, 9 *Dowl. P. C.* 927.)

To registrar of births, etc.

The Court will not grant a *mandamus* to compel the repair of a turnpike road. (*Rex v. Oxford and Witney Turnpike Road Trustees*, 6 *Jur.* 216, n.; 12 *Ad. & Ell.* 427.)

To repair a road.

It lies to admit a clerk of trustees under the general turnpike Acts. (*R. v. The Trustees of the Cheshunt Turnpike Roads*, 5 *B. & Adol.* 438.)

Clerk to trustees under turnpike Acts.

The Court of Queen's Bench discharged a rule for a *mandamus* to the principal and ancients of Barnard's Inn, to admit an attorney into the society, it not appearing that the Court had the requisite authority over the inn. (*Rex v. Barnard's Inn*, 5 *Ad. & Ell.* 17.)

To an inn of Court to admit.

It lies, to restore a man to the office of treasurer of a free school. (*Anon.*, *Lofft*, 148.) But upon application for a *mandamus* to restore to an office, a *prima facie* title must be shown, the party having properly admitted another remedy. *Secus* on a *mandamus* to admit. (*R. v. Jotham*, 3 *T. R.* 577.)

Other cases.

It lies to two arbitrators to appoint an umpire under a canal Act. (*R. v. Goodrich*, 3 *Smith*, 388.)

But not to execute one particular part of a power granted by Act of Parliament. (*R. v. Birmingham Canal Company*, 2 *W. Bla.* 708.)

See several instances of the grant or refusal of a *mandamus* in corporation matters, under tit. "*Corporation*," Vol. I.

To corporations.

Manor.

As to what is evidence of a manor, see tits. "*Evidence*" and "*Game*," Vol. II. (*Doe v. Heakin*, 2 *N. & P.* 660; 6 *Ad. & Ell.* 495.)

Evidence of.

As to manorial game rights, see "*Game*," Vol. II.

Game on.

The 4 & 5 Vict. c. 35, passed for the commutation of manorial rights in respect of lands of copyhold and customary tenure, and other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure, enacts by sect. 65, that the expenses of valuations, including the expense of making copies of apportionments, schedules, and all other documents required under the provisions of this Act, and all other expenses necessary in the making

Commutation of manorial rights, etc.

General expenses.

Manor.

any commutation or enfranchisement as aforesaid, except when otherwise provided by this Act, shall be paid by the tenants, or by the tenants and lords, in such proportions as the said commissioners shall in the confirmed apportionment, or otherwise, under their hands and seal, direct; and that if any difference shall arise touching the amount of the said expenses, or the share thereof to be paid by or to any person, it shall be lawful for the said commissioners or assistant-commissioner to certify under their or his hands or hand the amount to be paid by or to such person; and in case any person shall refuse or neglect to pay the amount so certified or specified in such apportionment to be payable from him immediately after notice thereof then upon production of such certificate, or of either of the deposited copies, under seal, of the said apportionment, before two of her Majesty's justices of the peace for the county, riding, division, or jurisdiction wherein the manor to which the same relates, or the greater part thereof in value as appearing in such apportionment, is situate; and on proof of such refusal or neglect, such justices are hereby authorized and empowered, by warrant under their hands and seals, to cause the same, and the costs of application and distress, to be levied by distress and sale of the goods of the person liable to pay the same, and to render the surplus (if any), after deducting the costs of distress and sale, to the person distrained upon.

Action for expenses.

Sect. 66. That if such expenses shall not be levied under the said distress within two months after the said warrant shall be granted, it shall be lawful for the person entitled to the said expenses (if the same shall, with the costs of application to such justices, amount to forty shillings or upwards), and his executors or administrators, to recover the same expenses and costs, with full costs of suit, in an action of debt in any of her Majesty's Courts of law at Westminster, against the party named in such warrant and certificate or apportionment as aforesaid, his executors or administrators, in which action such certificate or deposited copy of apportionment shall be satisfactory evidence of the amount of such expenses so awarded by the said commissioners or assistant commissioner, and of the same being due for and to the parties therein named; and the certificate of such justices under their hands on such warrant shall in like manner be evidence of the amount of costs of such application; and the production of such warrant (which in all such cases shall be allowed, and such certificate given by such justices) shall be satisfactory evidence of the non-recovery of such expenses and costs respectively under a distress.

Expenses of trustees (a).

Sect. 67. That every tenant, being a trustee, or not beneficially interested in the lands of which he stands admitted tenant to be affected by any commutation or enfranchisement under this Act (save as against an unadmitted mortgagee), shall be entitled to recover in like manner, by distress or action respectively, all expenses, costs, and charges which he may have to pay under or by reason of any such certificate, apportionment, distress, or action, from the person beneficially interested at the date of such apportionment in the said lands, his executors administrators, or assigns, or by a like distress on the said lands, and the occupier thereof shall be entitled to deduct any such payments out of any rent then or subsequently due; and should any dispute arise as to any trusteeship or right to such recovery, the same shall be determined by the said commissioners or assistant commissioner in like manner as is hereinbefore provided with respect to other causes of dispute or difference arising under this Act, and their or his certificate shall be deemed satisfactory evidence of the facts therein stated; and the like evidence shall

(a) By the 7 & 8 Vict. c. 55, s. 1, these provisions are extended to cases in which there shall not be an appor-

tionment, or commutation, or enfranchisement.

be produced before such justices or in such action as is hereinbefore provided in other cases of distress.

Manor.

Sect. 94. That if any person under the provisions of this Act shall wilfully give false evidence, he shall be deemed guilty of perjury; and if any person shall make or subscribe a false affidavit or declaration for the purposes of this Act, he shall suffer the penalties of perjury; and if any person shall wilfully refuse to attend in obedience to any lawful summons of any commissioner or assistant-commissioner, or to give evidence, or shall wilfully alter, withhold, destroy, or refuse to produce any book, deed, contract, agreement, account, or writing, terrier, map, plan, or survey, or any copy of the same, which may be lawfully required to be produced before the said commissioners or assistant-commissioner, he shall be deemed guilty of a misdemeanour.

False evidence to be deemed perjury.

Withholding evidence a misdemeanour.

Sect. 95. That no action or suit shall be commenced against any commissioner, assistant-commissioner, justice of the peace, valuer, umpire, or surveyor for anything done under the authority of this Act, until twenty-one days' notice thereof shall have been given in writing to the party against whom such action or suit is intended to be brought, or after sufficient satisfaction or tender of amends shall have been made to any party aggrieved, or after three calendar months shall have expired from the commission of the Act for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried in the county or place where the cause of action shall have arisen, and not in any other county or place; and if it shall appear that such notice of action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient amends were made or tendered as aforesaid, or if any such action or suit shall not be commenced within the time before limited in that behalf, or such action shall be laid in any county or place other than as aforesaid, then the jury shall find a verdict for the defendant therein, or the Court, upon summary application by motion in any such suit, may dismiss the same against such defendant; and if a verdict shall be found for such defendant, or such suit shall be dismissed upon application as aforesaid, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if upon any demurrer in such action or suit judgment shall be given for the defendant therein, then such defendant shall have costs, charges, and expenses as between attorney and client.

Limitations of actions against commissioners, assistant-commissioners, justices, etc.

Sect. 96. That no order, adjudication, or proceeding made or had by or before the said commissioners or any assistant-commissioner under the authority of this Act, or any proceeding to be had touching any offender against this Act, shall be quashed for want of form, or be removed or removeable by *certiorari*, or any other writ or process, into any of her Majesty's Courts of Record at Westminster or elsewhere.

Proceedings under this Act not to be quashed for want of form nor removed by *certiorari*.

By sect. 5 of the 15 & 16 Vict. c. 51, passed to extend the provisions of the Acts for the commutation of manorial rights, the commissioners, assistant-commissioners, and valuers may, by summons under the seal of the commissioners, call for the production for any of the purposes of this Act at such time and place as the commissioners shall appoint of any Court Rolls, or copies of Court Roll, in the possession or power of any lord or tenant, or of the steward of any manor, and may by summons under such seal summon and examine any lord or tenant, or other person on oath, and administer the oath necessary for that purpose, and every person who shall have been summoned, and to whom a reasonable sum shall have been paid or tendered for his expenses, and who shall without lawful excuse neglect or refuse to attend or to produce any such documents so called for as aforesaid shall, being convicted thereof before any two justices of the peace for the county wherein such proceedings were held, forfeit the sum of five pounds, and any person who shall wil-

Markets and Fairs.

fully give false evidence in any proceeding under this Act shall be guilty of perjury, provided always that no lord or tenant so summoned shall be bound to answer any questions as to his title.

Sect. 51. Any person obstructing or hindering any commissioner, assistant-commissioner, valuer, or umpire acting under the powers granted by the said recited Acts or by this Act, being convicted thereof before two justices of the peace shall forfeit the sum of five pounds.

Markets and Fairs.**Extent of Act.**

By the 10 Vict. c. 14, for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating markets and fairs, it is enacted "this Act shall extend only to such markets or fairs as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act."

*Construction of the Act.***"Special Act :"**

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorizing the construction or regulation of a market or fair, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the market or fair, and the works connected therewith, by the special Act authorized to be constructed or regulated; and the expression "the undertakers" shall mean the persons authorized by the special Act to construct or regulate the market or fair.

"prescribed :"**"the lands :"****"the undertaking :"****"undertakers."****Interpretations in this and the special Act :**

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say);

number :

Words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number :

gender :

Words importing the masculine gender shall include females :

"person :"

The word "person" shall include a corporation, whether aggregate or sole :

"lands :"

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure :

The word "lease" shall include a missive of and an agreement for a lease :	<i>Citing the Act.</i>
The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorized to be constructed or regulated :	"lease :" "the market or fair :"
The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods :	"cart :"
The word "driver" shall include the carter or other person having the care of any cart :	"driver :"
The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine :	"cattle :"
The expression "the collector" shall mean the person appointed by the undertakers to collect the stallages, rents, or tolls authorized by the special Act, and shall include the assistants of the collector :	"collector :"
The word "month" shall mean calendar month :	"month :"
The expression "superior Courts," when the matter submitted to the cognizance of the Court arises in England or Ireland, shall mean her Majesty's superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county of Durham ; and when such matter arises in Scotland it shall mean the Court of Session :	"superior courts :"
The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :	"oath :"
The word "county" shall include riding or other division of a county having a separate commission of the peace ; and in Scotland, stewartry, and any ward or other division of a county or stewartry, having a separate sheriff ; and it shall also include county of a city or county of a town :	"county :"
The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and if such matter arise in respect of lands situated not wholly in any one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated ; and where any matter is authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together :	"justice :" "two justices :"
The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively :	"sheriff :"
The expression "quarter sessions" shall mean quarter sessions as defined in the special Act ; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof, for the county or place in which the market or fair is situate, or for some division of such county having a separate commission of the peace.	"quarter sessions."

Citing the Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."

Short title of this Act.

Construction of the Market or Fair.

Form in which portions of this Act may be incorporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Construction of the Market or Fair.

Construction of markets or fairs to be subject to the provisions of this Act and one of the Lands Clauses Consolidation Acts, 1845.

6. Where by the special Act the undertakers shall be empowered, for the purpose of constructing the market or fair, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and in the "Lands Clauses Consolidation Act, 1845," when the special Act relates to England or Ireland, and to the provisions and restrictions contained in this Act and the "Lands Clauses Consolidation (Scotland) Act, 1845," when the special Act relates to Scotland; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act or injuriously affected by the construction of the works thereby authorized, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other persons by reason of the exercise, as to such lands, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

Errors and omissions in special Act, or schedules thereto, may be corrected by justices, etc., who shall certify the same.

Certificate to be deposited.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described or purporting to be described in the special Act, or in the schedule thereto, the undertakers, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply in England or Ireland to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited in England or Ireland with the clerk of the peace, and in Scotland with the sheriff clerk of the county in which the lands affected thereby shall be situated, or, where any such lands are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerk of the peace, sheriff clerk, or town clerk with the other documents to which they relate, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the undertakers may make the works in accordance with such certificate as if such omission, mis-statement, or wrong description had not been made.

Copies of alterations, etc. to be evidence.

8. Copies of any such alteration or correction thereof, or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk in whose custody the same may be, which certificate such clerk

shall give to all parties interested when required, shall be received in all courts of justice and elsewhere as evidence of the contents thereof.

Holding of Market, etc.

9. The undertakers, in addition to the lands authorized to be taken compulsorily, or to be appropriated by them for the purposes of the market or fair under the powers of this and the special Act, may appropriate any lands vested in them, or may contract with any person willing to sell the same for the purchase of any land within the limits of the special Act, not exceeding in the whole the prescribed number of acres for extraordinary purposes (that is to say);

Additional land may be taken for extraordinary purposes.

For providing slaughter-houses (if the undertakers shall be authorized by the special Act to provide slaughter-houses), and houses and places for weighing carts;

For making convenient roads and approaches to the market or fair:

For any other purpose which may be necessary for the formation or convenient use of the market or fair.

10. Subject to the provisions in this and the special Act, and any Act incorporated therewith, the undertakers for the purpose of constructing a place for holding the market or fair may execute any of the following works (that is to say);

Undertakers, subject to provisions of this and the special Act, may execute the works herein named.

They may enter upon any lands described in the special Act, or the schedule thereto, and other lands purchased by them or belonging to them, and set out such parts as they think necessary for the purposes of the market or fair, and thereupon from time to time build and maintain such market places or places for fairs, and such stalls, sheds, pens, and other buildings or conveniences for the use of the persons frequenting the market or fair, and for weighing and measuring goods sold in the market or fair, and for weighing carts, as they may think necessary:

They may from time to time on such lands as aforesaid make and maintain all such roads and approaches as they may think necessary for the convenient use of the persons resorting to the market or fair.

11. Provided always, that in the exercise of the powers by this or the special Act granted, the undertakers shall do as little damage as can be, and shall make full satisfaction in manner herein and by the special Act and any Act incorporated therewith provided to all parties interested for all damages sustained by them by reason of the exercise of such powers.

Undertakers to make satisfaction for damage done.

Holding of Market, etc.

12. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days' notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Before the market or fair shall be opened, Notice to be given by undertakers.

13. After the market place is opened for public use every person other than a licensed hawkers (a) who shall sell (b) or expose for sale in any

Sales elsewhere than in markets prohibited under

(a) This prohibition extends to a licensed auctioneer selling horses by auction in a yard belonging to a dwelling-house not his own in places where a toll is imposed on horses. *Llandaff, etc. Market Company v. London*, 8 C. B., N. S., 515; 30 L. J., C. 105.)

(b) A vessel in a canal is not, in the absence of any evidence that it is used as such, either a dwelling-house or shop within this exemption. (*Wiltshire v. Baker*, 11 C. B., N. S. 237; 31 L. J., M. C. 10, note.)

In order to ascertain whether a structure of wood be a person's own

Slaughter-houses.

a penalty not exceeding 40s.

Market days.

Penalty for selling or exposing for sale unwholesome meat, etc.

Penalty for obstructing inspector.

Penalty for obstructing market or fair keeper.

Power to erect slaughter-houses if authorized by the special Act.

Nothing to protect undertakers from an indictment for nuisance.

place within the prescribed limits (*a*), except in his own dwelling place or shop (*b*), any articles (*c*) in respect of which tolls are by the special Act authorized to be taken in the market, shall for every such offence be liable to a penalty not exceeding forty shillings.

14. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days (*d*) as the undertakers shall appoint from time to time by any bye-law to be made in pursuance of this or the special Act.

15. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding five pounds for every such offence; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding five pounds for every such offence.

16. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding forty shillings.

Slaughter-houses.

17. Where by the special Act the undertakers shall be empowered to provide slaughter-houses they may from time to time erect, on any land purchased by them under the provisions of this or the special Act or any Act incorporated therewith, any buildings, or set apart and improve any buildings belonging to them, for the slaughtering of cattle, and so soon as the same shall be ready for public use, the undertakers shall give notice to that effect by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within the said limits.

18. Provided, that nothing in this or the special Act or any Act incorporated therewith shall protect the undertakers from an indictment for nuisance, or from any other legal proceeding, in respect of any such slaughter-house as aforesaid.

shop within the exception in this section, the proper elements to take into consideration are,—whether it is of a substantial character; whether it is merely an alteration of a stall, in order to evade the provisions of the Act; whether it would admit of a purchaser coming inside, and would protect goods from the weather, and admit of their being sufficiently secured if left in it at night; and also the nature and duration of the holding from the owner by the person using the structure for the sale of goods. (*Pope v. Whalley*, 34 *L. J.*, *M. C.* 76.)

(*a*) A sale by auction by an auctioneer in his own shop is privileged.

(*Wiltshire v. Willett*, 11 *C. B.*, *N. S.* 240; 31 *L. J.*, *M. C.* 8.)

(*b*) Where the tolls were not imposed on the articles sold, but on the occupier of "every shop, stall, or ground space," it was held that a person who sold fruit and fish from door to door was not liable to the penalty. (*Caswell v. Cook*, 11 *C. B.*, *N. S.* 637; 31 *L. J.*, *M. C.* 185.)

(*c*) The "prescribed limits" mean the boundaries of the borough. (*Caswell v. Cook*, 11 *C. B.*, *N. S.* 637; 31 *L. J.*, *M. C.* 185.)

(*d*) Markets and fairs cannot be held on Sundays. See the 13 & 14 *Vict. c.* 23, *ante*, tit. "*Lord's Day*," 574.

19. After the expiration of ten days from the publication and posting of such notice, no person shall slaughter any cattle or dress any carcase for sale as human food or food of man in any place within the limits of the special Act other than a slaughter-house which was in use as such before and at the time of the passing of the special Act, and has so continued ever since, or the slaughter-houses made in pursuance of this and the special Act; and every person who shall, after such notice as aforesaid, slaughter any such cattle or dress for sale any such carcase (a) within the limits of the special Act in any place other than one of such slaughter-houses, shall be liable to a penalty not exceeding five pounds for every such offence.

Weighing of Goods and Carts.

Penalty on slaughtering cattle, etc., elsewhere than in an authorized slaughter-house.

20. The inspector of provisions, or any officer appointed by the undertakers for that purpose, may at all times of the day, with or without assistants, enter into and inspect all buildings erected or set apart by the undertakers for slaughtering cattle, and examine whether any cattle or the carcase of any cattle is deposited there; and in case such officer shall find any cattle, or the carcase or part of the carcase of any such cattle, which shall appear unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination such cattle, carcase or part of a carcase, shall be found unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such a way as to prevent the same being exposed for sale or used for the food of man; and every person who shall obstruct or hinder such inspector or other officer in the discharge of any of the duties aforesaid shall be liable to a penalty not exceeding five pounds for every such offence.

Inspector may enter and inspect slaughter-houses.

Weighing of Goods and Carts.

21. The undertakers shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.

Undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs.

22. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty not exceeding forty shillings.

Articles to be weighed if requested by the buyer.

Penalty for refusal.

23. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty not exceeding forty shillings.

Penalty on persons appointed refusing to weigh.

24. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such ma-

Undertakers to keep proper machines for weighing carts laden with goods.

(a) It is no offence for an inhabitant to slaughter cattle on his private premises unless they are intended for

sale as human food. (*Elias v. Nightingale*, 27 L. J., M. C. 151; 8 El. & Bl. 698.)

*Weighing of
Goods and
Carts.*

Carts to be
weighed at one
of the machines
erected by the
undertakers.

chines to the public by weighing such carts, with or without their loading, as may be required.

25. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be re-weighed without such load; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half mile, and a like sum for every additional half mile; and such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

Penalty on
drivers for re-
fusing to take
carts to be
weighed, etc,

26. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as hereinbefore directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding twenty shillings.

Penalties on
drivers of carts,
etc., committing
frauds in weigh-
ing.

27. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty not exceeding five pounds for each offence (that is to say);

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof:

If he alter any ticket denoting the weight of any such cart or the loading of the same:

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof:

If he, after the weighing of any such cart with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket:

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof.

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

Penalty on buy-
ers or sellers for
committing
frauds in weigh-
ing.

28. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for
frauds committed
by the machine
keeper.

29. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding five pounds in any of the following cases (that is to say):

If he wilfully neglect, on application, duly to weigh any cart, with or

without its loading, as the case may be, that is brought to the machine kept by him to be weighed :

If he do not fairly weigh every such cart, with or without loading, as the case may be :

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required :

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof :

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively :

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

30. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on other parties committing frauds as to weighing.

Tolls (a).

31. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage, rent, or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto.

Tolls, etc., not to be demanded until market or fair completed.

32. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid ; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed and fit for public use.

Certificate of two justices to be evidence that market or fair is completed.

33. The several stallages, rents, or tolls payable in respect of the market, or fair, or slaughter-house, shall be paid from time to time, on demand, to the undertakers or the collector, or other person authorized by the undertakers to receive the same.

Stallages, etc., when to be paid.

34. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorized by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured.

Tolls to be paid to persons authorized before the same are weighed, etc.

35. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable are brought into the market place, and before the cattle are put into any pen, or tied up in such market place ; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed.

Tolls in respect of cattle market when due.

(a) By the 23 & 24 Vict. c. 51, tit. "Tolls," Vol. V., the amount of the toll and dues levied under the authority of Parliament in respect of markets must be annually returned

to a secretary of state, except in the case of tolls or dues taken by any joint-stock company as profits of their undertaking, or taken by prescription or otherwise as private property.

Bye-laws.

Stallages, tolls, etc., may be varied from time to time.

Penalty on taking a greater toll than authorized by this or the special Act.

Recovery of tolls by distress, etc.

Disputes respecting tolls, how to be settled.

Penalty for obstructing collector of rents, etc.

List of tolls, etc., to be set up and placed in conspicuous places.

Bye-laws may be made for all or any of the purposes herein named.

36. The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair or for the slaughter-houses, or for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorized by the special Act.

37. Every person who shall demand or receive a greater toll than that authorized to be taken under the provisions of this or the special Act, shall for every such offence be liable to a penalty not exceeding forty shillings.

38. If any person liable to the payment of any stallage, rent, or toll authorized by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorized by the undertakers or their lessee to collect the same, may levy the same in England or Ireland by distress, and in Scotland by poinding and sale, of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any Court having competent jurisdiction.

39. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in England or Ireland by a justice, and in Scotland by the sheriff, and such justice or sheriff shall, on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; and in default of payment, on demand, of the money which shall be so awarded, and of the costs, the same shall be forthwith levied in England or Ireland by distress, and in Scotland by poinding and sale, and the justice or sheriff shall issue his warrant accordingly.

40. Every person who shall assault or obstruct any person authorized to collect any stallage, rent, or toll authorized by this or the special Act, shall for every such offence be liable to a penalty not exceeding forty shillings.

41. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing-house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: Provided always, that if such list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

Bye-laws.

Sect. 42. The undertakers may from time to time make such bye-laws as they think fit, for all or any of the following purposes (that is to say);

For regulating the use of the market place and fair, and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

For fixing the days, and the hours during each day, on which the market or fair shall be held:

For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least

once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein :

For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act :

For regulating the use of the weighing machines provided by the undertakers, and for preventing the use of false or defective weights, scales, or measures :

For preventing the sale or exposure for sale of unwholesome provisions in the market or fair :

And the undertakers may from time to time, as they shall think fit, repeal or alter any such bye-laws : Provided always, that such bye-laws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act, or of any Act incorporated therewith ; and such bye-laws shall be reduced to writing under the common seal of the undertakers if they be a body corporate, or the hands and seals of two of the undertakers if they be not a body corporate, and, if affecting other persons than the officers and servants of the undertakers, shall be printed and published as herein provided.

Bye-laws may be repealed or altered from time to time.

Sect. 43. The undertakers, by the bye-laws so to be made by them, may impose such reasonable penalties as they shall think fit, not exceeding five pounds for each breach of such bye-laws ; Provided that every such bye-law shall be so framed as to allow the justices or sheriff before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid.

Bye-laws may be enforced by imposition of penalties.

Sect. 44. No bye-laws made under the authority of this or the special Act (except such as may relate solely to the officers or servants of the undertakers) shall come into operation until the same shall be allowed in the manner prescribed by the special Act, or, if no manner be prescribed, until the same shall be allowed by the justices at quarter sessions if the market or fair be in England or Ireland, or the sheriff if the market or fair be situate in Scotland, and in either case approved under the hand of one of her Majesty's principal secretaries of state ; and it shall be incumbent on the justices at quarter sessions, or the sheriff, as the case may be, on the request of the undertakers, to examine into the bye-laws which may be tendered to them for that purpose, and to allow or disallow the same, as to them may seem meet.

No bye-laws to come into operation until allowed in the manner prescribed and approved by secretary of state.

Sect. 45. Provided always, that no such bye-law shall be allowed in manner herein mentioned, unless notice of the intention to apply for an allowance of the same shall have been given in one or more newspapers of the county in which the market or fair shall be situated, or, if there be no newspaper in such county, in one or more newspapers of the adjoining county, one month at least before the hearing of such application ; and any party aggrieved by any such bye-law, on giving notice of the nature of his objection to the undertakers ten days before the hearing of the application for the allowance thereof may, by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one party to be heard upon the same matter of objection.

Notice of allowance of bye-laws to be given in one or more newspapers, etc.

Sect. 46. For one month at least before any such application for allowance of any bye-law a copy of such proposed bye-laws shall be kept at the principal office of the undertakers, and shall be put up in some conspicuous place in the market place or fair, and all persons at all reasonable times may inspect such copy without fee or reward, and the undertakers shall furnish every person who shall apply for the same with a copy thereof or of any part thereof, on payment of sixpence for every one hundred words so to be copied.

A copy of proposed bye-laws to be open for inspection.

Accounts.

Publication of
bye-laws.

Sect. 47. The said bye-laws shall be published in the prescribed manner, and when no manner of publication is prescribed they shall be printed, and the clerk of the undertakers shall give a printed copy thereof to every person applying for the same without charge, and a copy thereof shall be painted or placed on boards, and put up in some conspicuous part of the principal office of the undertakers, and also in some conspicuous place in the market place or fair, and such boards, with the bye-laws thereon, shall be renewed from time to time as occasion shall require, and shall be open to inspection without fee or reward; and in case the said clerk shall not permit the same to be inspected at all reasonable times he shall for every such offence be liable to a penalty not exceeding five pounds.

Bye-laws to be
binding on all
parties.

Sect. 48. All bye-laws made and confirmed according to the provisions of this and the special Act, when so published and put up, shall be binding upon and be observed by all parties, and shall be a sufficient warrant for all persons acting under the same.

Proof of publica-
tion of bye-laws.

Sect. 49. The production of a written or printed copy of the bye-laws requiring confirmation by the Court of quarter session or the sheriff, authenticated by the signature of the judge or of the chairman of the Court or the sheriff who shall have approved of the same, and requiring approval under the hand of one of her Majesty's principal secretaries of state, and a written or printed copy of the bye-laws not requiring such confirmation or approval, authenticated by the common seal of the undertakers if they be a body corporate, or under the hands of the undertakers if not incorporated, or any two of them, shall be evidence of the existence and making of such bye-laws in all cases of prosecution under the same, without proof of the signature of such judge, chairman, or sheriff, or such secretary of state, or the common seal or signature of the undertakers; and with respect to the proof of the publication of any such bye-laws, it shall be sufficient to prove that a painted board containing a copy thereof was put up and continued in manner by this Act directed, and in case of its afterwards being displaced or damaged that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of such bye-laws, or was not duly put up or continued as directed by this Act.

Accounts.

Annual account
to be made up by
the undertakers,
and transmitted
to the clerk of
the peace in
England or Ire-
land, or to the
sheriff clerk in
Scotland, and to
be open to in-
spection.

Sect. 50. And with respect to the receipts and expenditure of the undertakers, be it enacted, that the undertakers shall in every year cause an annual account in abstract to be prepared, showing the whole receipt and expenditure of all rents and other moneys levied by virtue of this or the special Act for the year ending the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited or certified by the chairman of the undertakers, and by the auditors, if any, and shall send a copy of the said account, free of charge, to the clerk of the peace in England and Ireland, and the sheriff clerk in Scotland, of the county in which the market or fair is situate, on or before the expiration of one month from the day on which such accounts shall end, which account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection; and if the undertakers omit to prepare or send such account as aforesaid they shall forfeit for every such omission the sum of twenty pounds.

Penalty on omis-
sion to prepare
such account.

Tender of
amends.

Sect. 51. And with respect to the tender of amends, be it enacted that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act or any Act incorporated therewith, or by virtue of any power or authority there-

by given, and if before action brought in respect thereof such person make tender of sufficient amends to the person injured, such last-mentioned person shall not recover in any such action; and if no such tender have been made the defendant may, by leave of the Court where such action is pending, at any time before issue joined, pay into Court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

Recovery of Damages and Penalties.

Recovery of Damages and Penalties.

Sect. 52. If the market or fair be in England or Ireland the clauses of the "Railways Clauses Consolidation Act, 1845" (a), with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and if the market or fair be in Scotland the clauses of the "Railways Clauses Consolidation (Scotland) Act, 1845," with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the market or fair and the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

"Railways Clauses Consolidation Acts, 1845," as to damages, etc., to be incorporated with this and the special Act.

Sect. 53. In Ireland part of penalties to be paid to guardians of unions.

Sect. 54. And be it enacted, that nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of her Majesty in right of her Crown, or otherwise howsoever, or any proceedings at law or in equity by or on behalf of her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

Nothing in this or the special Act to affect the rights of the Crown.

Sects. 55. All things herein or in the special Act, or any Act incorporated therewith, authorized or required to be done by two justices, may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff or steward of any county, stewartry, or ward, or his substitute.

All things required to be done by two justices in England and Ireland may, in certain cases, be done by one, and in Scotland by the sheriff, etc.

Sect. 56. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the 2 & 3 Vict. c. 71; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as they would have had or been entitled to in case the order,

Penalties, etc., imposed in respect of any offence committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

(a) See this clause, tit. "Railways," Vol. V.

*Recovery of
Damages and
Penalties.*

Penalty for
giving false evi-
dence.

conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Sect. 57. Every person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to Special Act.

Copies of special
Act to be kept by
undertakers at
their office, and
deposited with
the clerks of the
peace, etc., and
be open to in-
spection.

Sect. 58. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in England or Ireland, and in the office of the sheriff's clerk of the county in Scotland, in which the undertaking is situate, a copy of such special Act so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the 7 Will. 4, and 1 Vict. c. 33.

Penalty on un-
dertakers failing
to keep or deposit
such copies.

Sect. 59. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

By the 31 & 32 Vict. c. 51, entitled "An Act to amend the Law relating to Fairs in England and Wales" (13th July, 1868), after reciting that it is expedient to make provision to facilitate the alteration of the days upon which fairs are now held in England and Wales, it is enacted as follows:

Short title.

1. This Act may be cited as the "Fairs Act, 1868."

Interpretation.

2. In this Act the term "owner" means any person or persons, or body of commissioners or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent, or Act of Parliament, or otherwise howsoever.

Secretary of
state to have
power to alter
days for holding
fairs on repre-
sentation made
to him.

3. In case it shall appear to the secretary of state for the home department, upon representation duly made to him by the magistrates of any petty sessional district within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be held in each year on some day or days other than that or those on which such fair is used to be held, it shall be lawful for the said secretary of state for the home department to order that such fair shall be held on such other day or days as he shall think fit: Provided always, that notice of such representation, and of the time when it shall please the secretary of state for the home department to take the same into consideration, shall be published once in the *London Gazette* and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered.

Notice of repre-
sentation to be
published in cer-
tain newspapers.

Order of secre-
tary of state to
be published in
certain news-
papers.

4. When and so soon as any such order as aforesaid shall have been made by the secretary of state for the home department, notice of the making of the same shall be published in the *London Gazette* and in some one newspaper of the county, city, or borough in which such fair is

usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall only be held on the day or days or at the place mentioned in such order; and it shall be lawful for the owner of such fair to take all such toll or tolls, and to do all such act or acts, and to enjoy all and the same rights, powers, and privileges in respect thereof, and enforce the same by all and the like remedies, as if the same were held on the day or days upon which or at the place at which it was used to be held previous to the making of such order.

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

All rights, etc., of owner to remain good.

Marriage.

As to bigamy, see tit. "*Bigamy*," Vol. I.

As to proof of marriage, see tit. "*Evidence*," Vol. II.

As to the registry of, under the Act 6 & 7 Will. 4, c. 86, see tit. "*Registers*," Vol. V.

As to abduction, see tit. "*Abduction*," Vol. I.

As to settlements by marriage, see tit. "*Poor*," Vol. IV.

Herein—

I. *Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, under the 6 & 7 Will. 4, c. 85, p. 839.*

[4 Geo. 4, c. 76; 5 Geo. 4, c. 32; 6 Geo. 4, c. 92; 11 Geo. 4, c. 18; 5 & 6 Will. 4, c. 54; 7 & 8 Vict. c. 56.]

II. *Marriages solemnized under a Registrar's Certificate, etc., under the 6 & 7 Will. 4, c. 85, p. 858.*

[6 & 7 Will. 4, c. 85; 7 Will. 4 & 1 Vict. c. 22; 3 & 4 Vict. c. 72; 19 & 20 Vict. c. 119.]

I. Of Marriages Solemnized by Banns or Licence, other than a Registrar's Certificate, etc., under the 6 & 7 Will. 4, c. 85.

The word bann is probably of Saxon origin, and in its primary sense perhaps signifies a proclamation. The institution of banns of marriage has been ascribed to the fourth Lateran Council, and Tertullian has been supposed to allude to it as *trinundina promulgatio*; the ordinance passed from the Catholic church into ours at the Reformation. (*Steer's Parliamentary Law*, by Hodgson, 155.)

Meaning of term bann.

A common licence is a dispensation by virtue of which marriage is permitted to be solemnized without the publication of banns, and it is to be granted only by a person having episcopal authority. (2 *Gibs. Cod.* 511.)

Licence, what.

The power to grant special licences was given to the Archbishop of Canterbury by the 25 Hen. 8, c. 21, s. 3. They are generally granted to persons of high station. (See *Steer's P. L. by Hodgson*, 161.) Under such a licence the marriage may be solemnized in any place at any time.

Special licence.

In a recent case it was made a question, but not decided, whether an

Whether an action lies against

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

a clergyman for not marrying.

action lies against a clergyman for refusing to perform the marriage ceremony. (*Davis v. Black*, 1 Q. B. 911; *et per Patteson, J.*) "It is not necessary to determine generally whether such an action will lie: and I own that I feel great difficulty on that point. At common law, parties might marry anywhere. It is true, however, that the 26 Geo. 2, c. 33, ss. 1, 4, confines them to the church of the parish where one of them has been resident for a certain time, and as a clergyman of a church might prevent any other clergyman from performing the marriage service in his church, it may perhaps be said that the duty now is cast upon him: here, however, the question arises on the declaration." That was an action against a rector of a parish for refusing to solemnize a marriage between the plaintiff and M. A. H. by licence; the declaration set forth the licence duly obtained for that purpose, and alleged that it became and was the duty of the defendant, upon notice of the licence, to solemnize the marriage when thereunto requested, and then averred notice of the licence, and a request by the plaintiff to solemnize the marriage, without stating any request by M. A. H., or that the request of the plaintiff was made with her consent or on her behalf:—It was held insufficient, after verdict, on motion for arrest of judgment.

4 Geo. 4, c. 76.
Repeal of prior Acts.

By 4 Geo. 4, c. 76, intituled "An Act for amending the Laws respecting the Solemnization of Marriages in England," sect. 1, the 26 Geo. 2, c. 33, and the 4 Geo. 4, c. 17, are repealed.

Banns, where, when, and how published; and

Sect. 2. From and after the 1st day of November [1823], all banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel, in which chapel banns of matrimony may now or may hereafter be lawfully published, of or belonging to such parish or chapelry wherein the persons to be married shall dwell (a), according to the form of words prescribed by the rubric (b) prefixed to the office of

(a) By the 7 Will. 4 & 1 Vict. c. 22, s. 34, *post*, 873, when parties live within different ecclesiastical districts, the banns are to be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of the 6 & 7 Will. 4, c. 85, s. 26, for the other district within which one of the parties is resident; and if there be no such chapel, then in the church or chapel in which the banns of such last-mentioned party might be legally published, if that Act had not been passed. And by the 3 & 4 Vict. c. 72, *post*, 874, further restrictions are enacted against the solemnization of marriages under the 6 & 7 Will. 4 out of the district where the parties dwell.

By 6 Geo. 4, c. 92, s. 2, *post*, 853, marriages may be solemnized in all churches and chapels erected since the passing of 26 Geo. 2, c. 33, and duly consecrated, in which it has been usual, since the passing of that Act, to solemnize marriages.

As to where the marriage may be solemnized when the church, etc., is undergoing repair, see 5 Geo. 4, c. 32,

and 11 Geo. 4 & 1 Will. 4, c. 18, *post*, 850, 851.

By 11 Geo. 4, c. 18, s. 4, *post*, 851, banns published in chapels duly consecrated before the passing of that Act (29th May, 1830), shall not be questioned by reason that they had been published in a chapel not legally authorized for the publication of banns, or the solemnization of marriages.

By 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134 (the "Church Building Acts"), all Acts relating to publication of banns and marriages are to apply to all separate and distinct parish churches, and all churches and chapels of ecclesiastical districts, or consolidated chapelries built under the authority of those Acts. And see 11 Geo. 4 & 1 Will. 4, c. 18, s. 3, *post*, 852.)

The commissioners, with consent of the bishop, are to determine whether banns shall be published and marriages had in chapels of ease to which ecclesiastical districts are attached. (*Steer's P. L. by Hodgson*, 157.)

(b) It would seem that this part of the enactment is merely directory, and that the precise form of the words

matrimony in the book of common prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published), immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall, in like manner, be published in the church or in any such chapel as aforesaid, belonging to such parish or chapelry wherein each of the said persons shall dwell; and that all other the rules prescribed by the said rubric concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that, in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever (a).

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

marriage to be solemnized where banns published.

Sect. 3. The bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel, having a chapelry thereunto annexed, may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize, by writing under his hand and seal, the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively; and such consent, together with such written authority, shall be registered in the registry of the diocese (b).

Bishop, with consent of patron and incumbent, may authorize publication of banns in any public chapel.

Consent, etc., to be registered.

Sect. 4. In every chapel, in respect of which such authority shall be given as aforesaid, there shall be placed in some conspicuous part of the interior of such chapel a notice in the words following:—"Banns may be published and marriages solemnized in this chapel."

Notice to be placed in such chapel.

Sect. 5. All provisions now in force, or which may hereafter be established by law, relative to providing and keeping marriage registers in any parish churches, shall extend, and be construed to extend, to any chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid, in the same manner as if the same were a parish church; and everything required by law to be done relative thereto by the churchwardens of any parish church shall be done by the chapelwarden or other officer exercising analogous duties in such chapel.

Provisions relative to marriage registers extended to such chapels.

Sect. 6. On or before the said 1st day of November, and from time to time afterwards as there shall be occasion, the churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized, shall provide a proper book of substantial paper, marked and ruled respectively in manner directed for the register book of marriages;

Book to be provided for registration of banns, etc.

need not be followed. (See *Standen v. Standen*, 1 Peake, C. N. P. 45.) The 6 & 7 Will. 4, c. 85, s. 1, *post*, 858, requires all the rules prescribed by the rubric to be observed in solemnizing marriages.

(a) An incumbent of a district parish, validly constituted under 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134, has an exclusive right to celebrate marriages by banns between persons both of whom are resident within the district parish. (*Tuckniss v. Alexander*, 32 L. J., Ch. 794.)

(b) By 6 & 7 Will. 4, c. 85, s. 26,

bishops with like consent may license chapels for marriages in populous parishes, whether such chapels have or have not chapelries annexed. By sect. 30, all regulations respecting marriages in churches shall extend to such chapels.

And by 1 Vict. c. 22, s. 33, *post*, 873, banns may be published in any chapels licensed by the bishop, under the last-mentioned Act, provided that notices be affixed in conspicuous parts of the interior of such chapels, that "banns may be published, and marriages solemnized at this chapel."

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Notice of names, and places, etc., of abode of parties, to be given to minister seven days before publication of banns (a).

and the banns shall be published from the said register book of banns by the officiating minister, and not from loose papers, and after publication shall be signed by the officiating minister, or by some person under his direction.

Sect. 7. No parson, vicar, minister, or curate, shall be obliged to publish the *banns of matrimony* between any persons whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver, or cause to be delivered to such parson, vicar, minister, or curate, a notice in writing, dated on the day on which the same shall be so delivered, of their *true Christian names and surnames*, and of the house or houses of their respective abodes within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively (a).

(a) See sect. 22, *post*, 847, Lord Tenterden, in *R. v. Inhabitants of Tibshelf* (1 B. & Adol. 190), laid down the following rules as fully established on the subject of a marriage being void by the publication of banns in a wrong name:—

"First, that if there be a total variation of a name or names, that is, if the banns are published in a name or names totally different from those which the parties, or one of them, ever used, or by which they were ever known, the marriage, in pursuance of that publication, is invalid; and it is immaterial, in such cases, whether the misdescription has arisen from accident or design, or whether such design be fraudulent or not.

"But, secondly, if there be a partial variation of name only, as the alteration of a letter or letters, or the addition or suppression of one Christian name, or the names have been such as the parties have used and been known by at one time and not at another, in such cases the publication may or may not be void; the supposed misdescription may be explained, and it becomes a most important part of the inquiry, whether it was consistent with honesty of purpose, or arose from a fraudulent intention. It is in this class of cases only, that it is material to inquire into the motives of the parties." (The substance of these rules will be found in the judgments of Lord Stowell, in *Sullivan v. Sullivan*, 2 Hagg, Consist. Rep. 254; *Frankland v. Nicholson*, 3 M. & Sel. 261; *Wilson v. Brokley*, 1 Phill. Rep. 147; *Pougett v. Tomkins*, 3 M. & Sel. 263; and *Mather v. Ney*, 3 M. & Sel. 265; and in the judgments in *R. v. Billingshurst*, 3 M. & Sel. 256, in this Court.)

But in order to invalidate the mar-

riage, *both parties* must have contracted it with a knowledge that no due publication of the banns, either in consequence of a misnomer, or otherwise, has taken place. (See *R. v. Wroton*, 4 B. & Adol. 640; 1 N. & M. 712, S. C.; and see *Bealey v. Reed*, 2 Curt. 833.)

A marriage by banns, in the publication of which one of the Christian names of the man, a minor, was designedly concealed, and which was solemnized in such imperfect name, was held void under the sects. 7, 22, of the above Act; the judicial committee being of opinion that the circumstance of the man omitting to sign his full Christian names in the register, indicated his participation in the previous false publication. (*Tongue v. Tongue*, 1 E. F. Moore, 90.)

A marriage by banns where the publication of banns was in the name of "John" instead of "Bower," the Christian name of the man, both parties being at the time of the solemnization of the marriage aware of such misdescription, was pronounced null. (*Midgley, f. c. Wood v. Wood*, 30 L. J., Mat. Cas. 57.)

The woman having consented to such publication on the faith of the statement of the man that the marriage would not be invalidated, the Court condemned him in the costs of the suit of nullity instituted by her. (*Id.*)

A partial departure from the true name of one of the parties to a marriage in a licence obtained in the altered name by the other party for the purpose of concealing the intended marriage, is no cause of nullity if the altered name may represent the person, and if such licence was obtained for and by the direction of that person. (*Bevan, f. c. M'Mahon*

Sect. 8. No parson, minister, vicar, or curate solemnizing marriages after the first day of November next, between persons both or one of whom shall be under the age of twenty-one years after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, unless such parson, minister, vicar, or curate, shall have notice of the dissent of such parents or guardians; and in case such parents or guardians, or one of them, shall openly and publicly declare, or cause to be declared, in the church or chapel where the banns shall be so published, at the time of such publication, his, her, or their dissent to such marriage, such publication of banns shall be absolutely void (a).

Sect. 9. Whenever a marriage shall not be had within three months after the complete publication of banns, no minister shall proceed to the solemnization of the same until the banns shall have been republished on three several Sundays, in the form and manner prescribed in this Act, unless by licence duly obtained according to the provisions of this Act.

Sect. 10. No licence of marriage shall, from and after the said first day of November, be granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences, to solemnize any marriage in any other church or chapel than in the parish church, or in some public chapel of or belonging to the parish or chapelry within which the usual place of abode of one of the persons to be married shall have been for the space of fifteen days immediately before the granting of such licence (b).

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Ministers not punishable for marrying minors without consent of parents, etc., unless with notice of dissent; if dissent publicly declared, publication of banns void.

Republishing of banns necessary, if marriage not solemnized in three months.

Licences to be granted to marry in church, etc., of such parish only where in one of parties resided for fifteen days before.

v. *M'Mahon*, 2 S. & T. 230; 30 L. J., Mat. Cas. 61.)

Aliter in a case of marriage by banns after a publication in such an altered name under similar circumstances. (*Ib.*)

A marriage was solemnized by virtue of a licence in which the name of the woman was stated to be "Margaret Bevan," her baptismal name and that by which she was commonly called being "Margaret Lea Bevan." The licence was obtained in the altered name by the man, who knowingly and by the direction of the woman suppressed the name "Lea," in order that the surrogate might not know who the woman was, and that the intended marriage might be kept secret from her friends:—Held, in a suit of nullity of marriage instituted by the woman on the ground of misnomer in the licence, that as the name "Margaret Bevan" might represent her, and the licence was obtained for her and by her direction, the marriage was not void as having been solemnized without licence. (*Ib.*)

A publication of the banns of an illegitimate child by the surname of the mother, as well as by that of the father, has been held to be valid. (*Sullivan v. Oldacre*, 3 Phill. Rep. 45.)

There is a strong legal presumption in favour of marriage, particularly after the lapse of a great length

of time; and this presumption must be met by strong, distinct, and satisfactory disproof. (*Piers v. Piers*, 2 H. L. Cas. 331.)

Where, therefore, two persons had shown a distinct intention to marry, and a marriage had been in form celebrated between them, by a regularly ordained clergyman in a private house, as if by special licence, and the parties, by their acts at the time, showed that they believed such marriage to be a real and valid marriage, the rule of presumption was applied in favour of its validity, though no licence could be found, nor any entry of the granting of it or of the marriage itself could be discovered, and though the bishop of the diocese (during whose episcopacy the matter occurred), when examined many years afterwards on the subject, deposed to his belief that he had never granted any licence for such marriage. (*Ib.*)

(a) But it seems that though dissent thus expressed will make the banns void, yet consent in marriages by banns is not necessary. (*Diddear v. Fauoit*, 3 Phill. Rep. 581.)

(b) If a licence be granted to a party in the name by which he is usually known, the marriage will still be valid, though it be not his real name. (*R. v. Burton-on-Trent*, 3 M. & Selw. 537.)

A marriage by licence under a false

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Where caveat entered, no licence to issue till matter examined by judge.

Parishes, where no church or chapel, and extra-parochial places, deemed to belong to any adjoining parish, etc.

Where churches demolished, or under repair, banns to be proclaimed in a church or chapel of adjoining parish, etc.

Oath to be taken before surrogate, before licence is granted (c).

Sect. 11. If any caveat be entered against the grant of any licence for a marriage, such caveat being duly signed by or on the behalf of the person who enters the same, together with his place of residence, and the ground of objection on which his caveat is founded, no licence shall issue till the said caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the registrar that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same (a).

Sect. 12 provided, that all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever, having no public chapel wherein banns may be lawfully published, shall be deemed and taken to belong to any parish or chapelry next adjoining, for the purposes of this Act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate, publishing such banns, shall, in writing under his hand, certify the publication thereof in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

Sect. 13 provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service, during the repair or rebuilding of the church as aforesaid (b); and, where no such place shall be so licensed, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel, wherein the banns have been proclaimed (b); and all marriages heretofore solemnized in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account, nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever (b).

Sect. 14. For avoiding all fraud and collusion in obtaining of licences for marriage, that before any such licence be granted, one of the parties shall personally swear before the surrogate, or other person having au-

name is valid, unless the name of one person is inserted with a fraudulent intention that the licence should be used by another. (*Lane v. Goodwin*, 4 Q. B. 361; 12 L. J., Q. B. 157.)

Where a licence is granted in due form for a marriage at a particular church, the incumbent is under no obligation to inquire whether there has been a sufficient residence to justify the granting of the licence. His proper course is to assume the regularity of the licence and to perform the marriage ceremony. (*Tuckniss v. Alexander*, 32 L. J., Ch. 794.)

(a) See the 6 & 7 Will. 4, c. 85, s. 13, *post*, 862.

(b) See the 5 Geo. 4, c. 32, s. 2, *post*, 850; and 11 Geo. 4, c. 18, *post*, 851.

(c) A false oath, taken before a surrogate, to obtain a marriage licence, will not support an indictment for perjury; but if the false oath be taken for the purpose of obtaining a licence, and the licence is obtained and the marriage had, the party may be indicted for a misdemeanour. (*R. v. Foster*, R. & R. C. C. R. 459.)

But, if the indictment only charges

thority to grant the same, that he or she believeth that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any ecclesiastical Court, to bar or hinder the proceeding of the said matrimony according to the tenor of the said licence; and that one of the said parties hath, for the space of fifteen days immediately preceding such licence, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required, under the provisions of this Act, has been obtained thereto: Provided always, that if there shall be no such person or persons having authority to give such consent, then, upon oath made to that effect by the party requiring such licence, it shall be lawful to grant such licence, notwithstanding the want of any such consent.

Sect. 15 provided, it shall not be required of any person applying for any such licence, to give any caution or security, by bond or otherwise, before such licence is granted; anything in any Act or canon to the contrary thereof notwithstanding.

Sect. 16. The father, if living, of any party under twenty-one years of age, such parties* not being a widower or widow; or, if the father shall be dead, the guardian or guardians of the person of the party so under age, lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried; and, if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent (a).

1. Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.

Bond not to be required before granting licence.

Who are to give consent, if parties under age (a).

* Sic.

that the party took the false oath, without stating that it was for the purpose of procuring a licence, or that a licence was procured thereby, it is not good. (*S. C.*)

(a) This provision, requiring the consent of parents, etc., is directory only, and a marriage without such consent is still valid. (*R. v. Birmingham*, 2 *Man. & R.* 230; 8 *B. & C.* 29, *S. C.* See *Thompson v. Raikes*, 1 *Ad. & Ell.* 872.) But by sect. 23, *post*, 847, the husband, if party to the violation of the directory provisions of this Act, may be deprived of all right to the property of the wife. (*Id.* See same case, 2 *Man. & R.* 230, and note thereon.)

When consent has once been given, dissent must be very unequivocally expressed to countermand the consent. (*Hodgkinson v. Wilkie*, 1 *Hagg. Cons. R.* 262.) Consent duly obtained is not revoked by the death of the person consenting. (*Yonge v. Furze*, 26 *L. J.*, *Ch.* 117.) It is not necessary that the consent should be expressed in writing, and it may be presumed from the acts of the party whose consent is required, as where

the husband visited the woman at her father's house with his knowledge and approbation, the father having declared that the prospect of the match gave him satisfaction. (*Smith v. Huson*, 1 *Phill. Ecc. R.* 287, 306.) But the consent must be precedent to, or at least contemporary with, the marriage, for no subsequent consent can cure the defect. (*Sullivan v. Sullivan*, 2 *Hagg. Cons. R.* 241.)

The consent of the father (where necessary) must be presumed until the contrary is proved; and the mere fact that the mother's name appeared in the register as the consenting party was held not sufficient to rebut the presumption. (*Harrison v. Southampton Corporation*, 22 *L. J.*, *Ch.* 722.)

The 6 & 7 Will. 4, c. 85, s. 12, *post*, 861, impliedly dispenses with consent where there is no person authorized to give it.

Marriages made without consent of the parents, were invalid, both by the canon and civil law. (*Ayliffe, Parer.* 362.)

The *patria potestas* of the civil law, as respects the marriage of children,

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

If father of minor be *non compos*, or if guardians or mother of minor be *non compos*, or beyond sea, etc., parties may apply to Lord Chancellor.

Surrogate to take oath of office.

If marriages by licence be not solemnized within three months, new licence to be obtained.

Right of Archbishop of Canterbury to grant special licences.

Persons solemnizing marriages in any other place than a church or chapel, or without banns or licence, or under pretence of being in holy orders, shall be transported (b).

Sect. 17. In case the father or fathers of the parties to be married, or of one of them so under age as aforesaid, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage (a), then it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the lord chancellor, lord keeper, or the lords commissioners of the great seal of Great Britain for the time being, master of the rolls, or vice-chancellor of England, who is and are respectively hereby empowered to proceed upon such petition in a summary way; and, in case the marriage proposed shall upon examination appear to be proper, the said lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, master of the rolls, or vice-chancellor, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual, to all intents and purposes, as if the father, guardian or guardians, or mother of the person so petitioning had consented to such marriage.

Sect. 18 provided, from and after the said first day of November, no surrogate hereafter to be deputed by any ecclesiastical judge who hath power to grant licences, shall grant any such licence until he hath taken an oath before the said judge, or before a commissioner appointed by commission under the seal of the said judge, which commission the said judge is hereby authorized to issue, faithfully to execute his office according to law to the best of his knowledge, and hath given security by his bond in the sum of 100*l.*, to the bishop of the diocese, for the due and faithful execution of his said office.

Sect. 19. Whenever a marriage shall not be had within three months after the grant of a licence by any archbishop, bishop, or any ordinary or person having authority to grant such licence, no minister shall proceed to the solemnization of such marriage until a new licence shall have been obtained, unless by banns duly published according to the provisions of this Act.

Sect. 20. Nothing hereinbefore contained shall be construed to extend to deprive the Archbishop of Canterbury and his successors, and his and their proper officers, of the right which hath hitherto been used, in virtue of a certain statute made in the twenty-fifth year of the reign of the late king Henry the Eighth, intituled "An Act concerning Peter Pence and Dispensations," of granting special licences to marry at any convenient time or place.

Sect. 21. If any person shall, from and after the said first day of November, solemnize matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, or at any other time than between the hours of eight and twelve in the forenoon,

was abolished by the canon law, which is the law by which marriages are governed in this country, except so far as it has been restricted by the "Marriage Act." (*Sherwood v. Ray*, 1 *Moore*, P. C. 353.)

(a) This provision does not apply to the case of a father who is beyond the seas, or unreasonably withholds his consent; but only in a case in which he is *non compos mentis*. (See *Ex parte I. C.*, 3 *Myl. & Cr.* 471; *Ex parte Colegrave*, 2 *Jurist*, 463.)

(b) By the 7 & 8 Will. 3; c. 35,

every parson, vicar, or curate, who shall marry any persons without licence, or due publication of banns, or suffer any other minister to do so, in the church or chapel to such parson so pertaining, shall forfeit £100 (ss. 2, 3,) and the man so married shall forfeit £10, and the sexton or clerk officiating on the occasion shall also forfeit £5, to be recovered with costs by him who shall sue for the same (s. 4). (See "*Clergy*," Vol. I.) See also the 6 & 7 Will. 4, c. 85, s. 39, *post*, 868.

unless by special licence from the Archbishop of Canterbury, or shall solemnize matrimony without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person, falsely pretending to be in holy orders, shall solemnize matrimony according to the rites of the church of England; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of fourteen years, according to the laws in force for transportation of felons; provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed.

Sect. 22. If any persons shall knowingly and wilfully intermarry in any other place than a church (a), or such public chapel wherein banns may be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or licence from a person or persons having authority to grant the same, first had and obtained, or shall knowingly and wilfully consent to, or acquiesce in, the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void, to all intents and purposes whatsoever (b).

Sect. 23. If any valid marriage solemnized by licence shall, after the said first day of November next, be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, contrary to the provisions of this Act, by means of such party falsely swearing as to any matter or matters to which such party is hereinbefore required personally to swear, such party wilfully and knowingly so swearing (d); or if any valid marriage by banns shall, after the said first day of November next, be procured by a party thereto to be solemnized by banns between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, such party knowing that such person as aforesaid under the age of twenty-one years had a parent or guardian then living, and that such marriage was had without the consent of such parent or guardian, and knowing that banns had not been duly published, according to the provisions of this Act, and having knowingly caused or procured the undue publication of banns; then, and in every such case, it shall be lawful for his Majesty's attorney-general (or for his Majesty's solicitor-general, in case of the vacancy of the office of attorney-general),

1. Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.

4 Geo. 4, c. 76.

Prosecution to be in three years.

Marriages void where persons wilfully marry in any other place than a church, etc., without banns or licence (b).

When marriage solemnized between parties under age, by false oath or fraud, the guilty party to forfeit all property accruing from the marriage (c).

(a) *Prima facie* a vestry is part of the church; and a marriage solemnized in a vestry belonging to and in a church is valid. (*Wing v. Taylor*, 30 L. J., *Mat. Cas.* 258.)

(b) To render a marriage invalid within this enactment, it must be contracted by both parties with a knowledge that no due publication has taken place. And, therefore, where the intended husband procured the banns to be published in a christian and surname which the woman had never borne, but she did not know that fact until after the solemnization of the marriage: it was held, that the marriage was valid. (*R. v. The Inhabitants of Wroston*, 4 B. & Adol. 640; 1 Nev. & M. 712, S. C. See *Wiltshire v. Prince*, 3 Hagg. Rep. 332.)

The case of *R. v. Tibshelf* (1 B. & Ad. 190), *ante*, 842, was decided under

the Marriage Act, 26 Geo. 2, c. 33, s. 8. The words of the present Act, 4 Geo. 4, c. 76, s. 22, are wholly, and it seems advisedly, different. (See *Wiltshire v. Prince*, 3 Hagg. Rep. 332.) See the 6 & 7 Will. 4, c. 85, s. 42, *post*, 869.

A marriage between English subjects celebrated according to the rites of the Church of England but not in the presence of a priest in holy orders, is invalid at common law. (*Catherwood v. Caslon*, 13 M. & W. 261; 13 L. J. Ex. 334.)

(c) See *ante*, 845 (a). See the 6 & 7 Will. 4, c. 85, s. 43, *post*, 869, and 12 & 13 Vict. c. 68, s. 15.

(d) One of the parties to the marriage who swears that the other party is of age, he or she knowing the contrary, is a party falsely swearing within the meaning of the Act. (*Att.-Gen. v. Severne*, 13 L. J. Ch. 399.)

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

4 Geo. 4, c. 76.

Proviso.

Previous agreements to be void.

Information to be filed within one year.

by information in the nature of an English bill in the Court of Chancery or Court of Exchequer, at the relation of a parent or guardian of the minor, whose consent has not been given to such marriage, and who shall be responsible for any costs incurred in such suit, such parent or guardian previously making oath as is hereinafter required, to sue for a forfeiture of all estate, right, title, and interest in any property which hath accrued or shall accrue to the party so offending by force of such marriage; and such Court shall have power in such suit to declare such forfeiture, and thereupon to order and direct that all such estate, right, title, and interest in any property as shall then have accrued, or shall thereafter accrue to such offending party, by force of such marriage, shall be secured under the direction of such Court for the benefit of the innocent party, or of the issue of the marriage, or of any of them, in such manner as the said Court shall think fit, for the purpose of preventing the offending party from deriving any interest in real or personal estate, or pecuniary benefits, from such marriage; and if both the parties so contracting marriage shall, in the judgment of the Court, be guilty of any such offence as aforesaid, it shall be lawful for the said Court to settle and secure such property, or any part thereof, immediately for the benefit of the issue of the marriage, subject to such provisions for the offending parties, by way of maintenance or otherwise, as the said Court, under the particular circumstances of the case, shall think reasonable, regard being had to the benefit of the issue of the marriage during the lives of their parents, and of the issue of the parties respectively by any future marriage, or of the parties themselves, in case either of them shall survive the other: Provided also, that no such information as aforesaid shall be filed, unless it shall be made out to the satisfaction of the attorney or solicitor-general, before he files the same, by oath or oaths sworn before one of the masters in ordinary in Chancery, or before one of the barons of the Exchequer, and which they are hereby respectively empowered to administer, that the valid marriage to be complained of in such information hath been solemnized in such manner and under such circumstances, as, in the judgment of the said attorney or solicitor-general, are sufficient to authorize the filing the information under the provisions of this Act; and that such marriage has been solemnized without the consent of the party or parties at whose relation such information is proposed to be filed, or of any other parent or guardian of the minor married, to the knowledge or belief of the relator or relators so making oath; and that such relator or relators had not known or discovered that such marriage had been solemnized more than three months previous to his or their application to the attorney or solicitor-general.

Sect. 24. All agreements, settlements, and deeds entered into or executed by the parties to any marriage, in consequence of or in relation to which marriage such information as aforesaid shall be filed, or by either of the said parties, before and in contemplation of such marriage, or after such marriage, for the benefit of the parties or either of them, or their issue, so far as the same shall be contrary to or inconsistent with the provisions of such security and settlement as shall be made by or under the direction of such Court as aforesaid, under the authority of this Act, shall be absolutely void, and have no force or effect.

Sect. 25. Provided that any original information to be filed for the purpose of obtaining a declaration of any such forfeiture as aforesaid, shall be filed within one year after the solemnization of the marriage by which such forfeiture shall have been incurred, and shall be prosecuted with due diligence; and in case any person or necessary party to any such information shall abscond, or be or continue out of England, it shall be lawful for the Court in which such information shall be filed to order such person to appear to such information, and answer the same within such time as to such Court shall seem fit; and to cause such order to be served on such person at any place out of England, or to cause such

order to be inserted in the *London Gazette* and such other British or foreign newspapers as to such Court shall seem proper; and, in default of such person appearing and answering such information within the time to be limited as aforesaid, to order such information to be taken as confessed by such person, and to proceed to make such decree or order upon such information as such Court might have made if such person had appeared to and answered such information: Provided always, that in case the person at whose relation any such suit shall have been instituted shall die pending such suit, it shall be lawful for the Court of Chancery, if such Court shall see fit, to appoint a proper person or proper persons, at whose relation such suit may be continued.

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Sec. 26. Provided that, after the solemnization of any marriage under a publication of banns, it shall not be necessary, in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or, where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties, for the space of fifteen days as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage (a).

Proof of actual residence of parties not necessary to validity of marriage.

Sec. 27. In no case whatsoever shall any suit or proceedings be had in any ecclesiastical Court in order to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti* or *per verba de futuro*, any law or usage to the contrary notwithstanding (b).

No suit shall be had to compel celebration of marriage by reason of any contract of marriage.

Sec. 28. And, in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, that, from and after the said first day of November, all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and the section proceeds to enact provisions for the registration of marriages, which provisions are now repealed by the 6 & 7 Will. 4, c. 86, and other provisions are enacted instead. See them under title "*Registers*," Vol. V.

Marriages to be in the presence of two witnesses (c).

Sec. 29 provided against the forgery and destruction of licences, registers, etc.; but that section is repealed by the 1 Will. 4, c. 66, and further provisions made; for which see tit. "*Registers*," Vol. V.

Forgery.

Sec. 30. The Act shall not extend to the royal family.

Act not to affect royal family.

Sec. 31. Provided that nothing in this Act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion (d), where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively. (See the 6 & 7 Will. 4, c. 85, s. 2, *post*, 859.)

Act not to extend to Quakers and Jews.

(a) See the 6 & 7 Will. 4, c. 85, s. 25, *post*, 865.

(b) As a precontract cannot be enforced, it does not create a disability to marry another person. (*Beachey v. Brown*, *El. Bl.* & *El.* 796; 29 *L. J.*, Q. B. 105.)

(c) This section is directory only, so that a marriage solemnized in the presence of one witness only is valid.

(*Wing v. Taylor*, 2 *Sw. & Tr.* 278; 30 *L. J.*, *Mat. Cas.* 258.) But a man and woman cannot be lawfully married by the man, he being a priest. (*Beamish v. Beamish*, 9 *H. L. Cas.* 274.)

(d) It was held in *Jones v. Robinson*, 2 *Phil. E. C.* 285, that a Jewess married by Christian rites was within the "Marriage Act" requiring the consent of parents or guardians.

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Two printed copies of Act to be sent to clergyman, of which one to be kept in parish chest.

5 Geo. 4, c. 32.

Validity of marriages solemnized in certain places, etc., where churches under repair, etc., not to be questioned.

Sect. 32. Two printed copies of this Act shall, as soon as conveniently may be after the passing of this Act, be provided by his Majesty's printer, and transmitted to the officiating ministers of the several parishes and chapelries in England respectively; one of which copies shall be deposited and kept with the book containing the marriage register of such parish or chapelry, in the chest or box provided for the custody of the same.

Sect. 33. The Act shall extend only to England.

By the 5 Geo. 4, c. 32, s. 1, after reciting, "whereas by Geo. 4, c. 76, s. 13, it is provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; but it is not provided that marriages may be solemnized in such place so licensed: and whereas it is further provided, that where no such place shall be so licensed, then, during such period as aforesaid, the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; but it is not provided that marriages may be solemnized by licence in such adjoining church or chapel as aforesaid: and whereas it is provided that all marriages *theretofore*, but it is not provided that marriages *thereafter* solemnized in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account: and whereas it is provided, that the ministers who have so solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever; but it is not provided that the ministers who shall thereafter solemnize such marriages shall not be liable to such censure or other proceeding or penalty; and whereas it is expedient that marriages heretofore and hereafter solemnized in such place so licensed as aforesaid, during the repair or rebuilding of any church or chapel, or if no such place shall be so licensed, then in a church or chapel of some adjoining parish or chapelry, whether by banns lawfully proclaimed, or by licence lawfully granted, should not have their validity questioned on account of their being so solemnized: and whereas it is expedient that the ministers who shall have so solemnized the same should not be liable to any ecclesiastical censure, or to any other proceeding whatsoever:" it is enacted, "that from and after the passing of this Act (17th of May, 1824), all marriages which have been heretofore solemnized, or which shall be hereafter solemnized in any place within the limits of such parish or chapelry so licensed as aforesaid for the performance of divine service, during the repair or rebuilding of the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, or if no such place shall be so licensed, then in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, whether by banns lawfully published in such church or chapel, or by licence lawfully granted, shall not have their validity questioned on account of their having been so solemnized; nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding whatsoever."

Licences for marriages in churches, etc., extend to any place within the parish, licensed for performance of divine service while church is repairing, etc.

By sect. 2, all licences granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences for the solemnization of marriages in the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, shall be deemed and taken to be licences for the solemnization of marriages in any place within the limits of such parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the

repair or rebuilding of any such church or chapel, or if no such place shall be so licensed, then in the church or chapel of any adjoining parish or chapelry wherein marriages have been usually solemnized.

By sect. 3, all banns of marriage proclaimed, and all marriages solemnized according to the provisions of this Act, in any place licensed as aforesaid, within the limits of any parish or chapelry, during the repair or rebuilding of the church or chapel of such parish or chapelry, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and shall be so registered accordingly."

The 11 Geo. 4 & 1 Will. 4, c. 18, intituled, "An Act to render Valid Marriages solemnized in certain Churches and Chapels," passed 29th of May, 1830, after reciting, "whereas, by the 4 Geo. 4, c. 76, it is provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid: and whereas, by the 5 Geo. 4, c. 32, it was enacted, that all marriages which had been theretofore solemnized, or which should be thereafter solemnized, in any place within the limits of such parish or chapelry so licensed as aforesaid for the performance of Divine service during the repair or rebuilding of the church of any parish or chapel of any chapelry, wherein marriages had been usually solemnized, or, if no such place should be so licensed, then in a church or chapel of any adjoining parish or chapelry in which banns were usually proclaimed, whether by banns lawfully published in such church or chapel; or by licence lawfully granted, should not have their validity questioned on account of their having been so solemnized, nor should the ministers who had so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding whatsoever; and whereas the ministers of certain parish churches and chapels of chapelries have, during the repair or rebuilding of such churches or chapels, published the banns of marriages* in some places within the limits of their parishes or chapelries respectively wherein Divine service has been usually performed during the time of such repair or rebuilding, but have solemnized the marriages themselves in the churches or chapels of the same or of some adjoining parishes or chapelries; and whereas other clergymen, during the time of such repair or rebuilding, have published banns of marriage and solemnized marriages in places duly licensed for the performance of Divine worship, according to the forms of the united church of England and Ireland, within their respective parishes or chapelries, but not licensed specially for such performance during such time as aforesaid; and whereas it is expedient that the marriages so solemnized should not on that account have their validity questioned;" enacts, "that all marriages, the banns whereof have been published in any place used for the performance of Divine service within the limits of any parish or chapelry during the repairs or rebuilding of the church or chapel thereof, which marriages have been solemnized either in the said place so used or in the church or chapel of the same or of some adjoining parish or chapelry during such repair or rebuilding, shall not have their validity questioned on account of having been so solemnized."

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Banns and marriages solemnized in such places, to be considered as done in parish church.

11 Geo. 4 and 1 Will. 4, c. 18.

* *Sic.*

Validity of marriages solemnized under certain circumstances not to be questioned.

Sect. 2. In every case in which the church of any parish or place, in which banns of marriage may be published and marriages solemnized, shall be pulled down, or be rebuilding, or under repair, it shall be lawful for the bishop of the diocese to order and direct that banns of marriage

While church, etc., under repair, bishop may direct banns to be published in

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

any consecrated chapel of parish.

For removing doubts as to marriages solemnized in churches made and constituted under Acts 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134.

The validity of marriages solemnized in certain chapels not to be questioned;

nor marriages solemnized in chapels, the consecration of which may be doubted.

6 Geo. 4, c. 92.

* *Sic.*

may be published, and marriages solemnized in any consecrated chapel of such parish or place which he shall by order in writing direct, until the church shall again be opened for the performance of Divine service; and during all such period, the said consecrated chapel shall, for all purposes relating to the publication of banns of marriage and to the solemnization of marriages, be deemed and taken to be the church of the parish, anything in any Act or Acts to the contrary notwithstanding; and the fees in respect thereof shall be applied, during such period, as the bishop of the diocese shall, with the consent of the incumbent, order and direct.

Sect. 3. And whereas doubts have arisen touching the validity of marriages solemnized in churches, which have been made and constituted the churches of distinct parishes, or district parishes, under the provisions of the 58 Geo. 3, c. 45; and whereas it is expedient that such doubts should be removed, it is therefore enacted, that all marriages which have already been solemnized, or may hereafter be solemnized, in any church which shall have been made and constituted the church of a distinct parish, or of a district parish, as aforesaid, after consecration thereof and assignment of a district thereto, shall be as good and valid in law as if such marriages had been solemnized in any parish church wherein banns had been usually published before or at the time of passing an Act made in the twenty-sixth year of king George the Second, intituled "An Act for the better preventing of Clandestine Marriages."

Sect. 4. And whereas, by error, banns have been published, and divers marriages have been solemnized in chapels duly consecrated, but in which chapels banns cannot be legally published, nor marriages by law be solemnized; and it is expedient to remove all doubts arising from the circumstances aforesaid, touching the due publication of such banns, and the validity of such marriage; it is therefore enacted, that all banns already published, and all marriages already solemnized, in such chapels as aforesaid, shall not hereafter be questioned on account of the said banns having been published, or the said marriages solemnized, in a chapel not legally authorized for the publication of banns and the solemnization of marriages: Provided always, that nothing herein contained shall extend or be construed to extend to authorize the publication of banns, or the solemnization of marriages in such chapels hereafter.

Sect. 5. And whereas divers marriages have taken place in chapels supposed to be consecrated, the consecration of which chapels, however, cannot be proved, and may be doubted; and whereas it is expedient that all apprehensions touching the validity of such marriages, on this account, should entirely be removed; it is therefore enacted, that the validity of such marriages shall not hereafter be questioned on account of the uncertainty respecting the consecration of such chapels.

By the 6 Geo. 4, c. 92, intituled, "An Act to render valid Marriages Solemnized in certain Churches and Public Chapels, in which Banns have not usually been Published," passed 5th of July, 1825, reciting, "that since the making of the 26 Geo. 3, c. 33, and the 44 Geo. 3, c. 77, divers churches and chapels have been erected and built within that part of Great Britain called England,* Wales, and the town of Berwick-upon-Tweed, which have been duly consecrated, and divers marriages have been solemnized therein since the passing of the said last-mentioned Act; but by reason that in such churches and chapels banns of matrimony had not usually been published before or at the time of passing the said first-mentioned Act, nor any authority obtained for solemnizing marriages therein, under the provisions of an Act passed in the fourth year of the reign of his present Majesty king George the Fourth, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriages in England,' such marriages have been or may be deemed to be

void;" it is enacted, "that all marriages already solemnized in any church or public chapel in that part of Great Britain called England and Wales, and the town of Berwick-upon-Tweed, erected since the making of the said Act of the twenty-sixth year of the reign of his said late Majesty king George the Second, and consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published before or at the time of passing the said first-mentioned Act."

Sect. 2 enacts, that it shall and may be lawful for marriages to be in future solemnized in all churches and chapels erected since the passing of the said Act in the twenty-sixth year of the reign of his late Majesty king George the Second, and consecrated, in which churches and chapels it has been customary and usual before the passing of this Act to solemnize marriages; and all marriages hereinafter solemnized therein shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published before or at the time of passing the said Act. (See the 4 Geo. 4, c. 76, s. 2, *ante*, 840.)

Sect. 3. The registers of marriages solemnized or to be solemnized in the said churches or chapels, which are hereby enacted to be valid in law, or copies thereof, shall be received in all courts of law and equity as evidence of such marriages, in the same manner as the registers of marriages solemnized in parish churches or public chapels in which banns were usually published before or at the time of passing the said Act of the twenty-sixth year of the reign of his said late Majesty king George the Second, or copies thereof, are received in evidence: Provided nevertheless, that in all such Courts the same objections shall be available to the receiving such registers or copies as evidence as would have been available to receiving the same as evidence if such registers or copies had related to marriages solemnized in such last-mentioned parish churches or public chapels as aforesaid.

Sect. 4. The registers of all marriages solemnized in any such public chapel where banns had not been usually published before or at the time of passing the said Act of the twenty-sixth year of the reign of his said late Majesty king George the Second, which marriages are hereby enacted to be valid in law, shall, within three months after the passing of this Act, be removed to the parish church of the parish in which such chapel shall be situated; and in case such chapel shall be situated in an extra-parochial place, then to the parish church next adjoining to such extra-parochial place, to be kept with the marriage registers of such parish, and in like manner as parish registers are directed to be kept by the said Act of the twenty-sixth year of the reign of his said late Majesty king George the Second.

The 11 Geo. 4 & 1 Will. 4, c. 66, ss. 20, 21, and 22 provides against the forgery or destruction of marriage licences, registers, etc. (See title "*Registers*," *post*.)

By the 5 & 6 Will. 4, c. 54, intituled "An Act to render certain Marriages Valid, and to alter the Law with respect to certain Voidable Marriages" (31st August, 1835), reciting, "whereas marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical Court pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of affinity should remain unsettled during so long a period, and it is fitting that all marriages which may hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be *ipso*

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

In what case marriages herein mentioned good in law.

Marriages in future solemnized in such churches, etc., valid.

Registers of such marriages evidence.

Proviso as to evidence.

Registers of marriages solemnized in chapels where banns had not been usually published before 26 Geo. 2 to be removed to parish church.

Forgery.

5 & 6 Will. 4, c. 54.

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

Marriages before passing of this Act of persons within the prohibited degrees not to be annulled.

Marriages of persons within prohibited degrees hereafter to be absolutely void.

Not to extend to Scotland.

facto void, and not merely voidable," it is enacted, "that all marriages which shall have been celebrated before the passing of this Act between persons being within the prohibited degrees of affinity shall not hereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which shall be depending at the time of the passing of this Act: Provided that nothing hereinbefore enacted shall affect marriages between persons being within the prohibited degrees of consanguinity."

Sect. 2. All marriages which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatsoever.

Sect. 3. The Act shall not extend to Scotland.

It has been held that the issuing of the citation in a cause of nullity of marriage, seven days previous to this Act receiving the royal assent, was within the meaning of the Act, so as to constitute such suit depending. (*Sherwood v. Ray*, 1 *Moore*, P. C. 353.)

The prohibited degrees within this Act are those declared by the 28 Hen. 8, c. 7, s. 11, to be prohibited by God's law; consequently, the marriage of a man with the sister of his deceased wife is prohibited, and void under this Act. (*Reg. v. St. Giles's*, 11 Q. B. 173; *Reg. v. Chadwick*, 17 L. J., M. C. 33; *Wing v. Taylor*, post, 855.)

This law extends to an illegitimate as well as to a legitimate child of his late wife's parents. (*Ib.*)

The marriage of a man with a sister of his deceased wife is declared by 28 Hen. 8, c. 7, to be contrary to God's law; and though that statute itself is repealed, its declarations are renewed in the 28 Hen. 8, c. 16, and 32 Hen. 8, c. 38, which are in force. (*Brook v. Brook*, 9 H. L. C. 193; 3 Sm. & G. 481; 27 L. J. Ch. 401.) Being forbidden by the law of England, such a marriage contracted by British subjects temporarily resident abroad, but really domiciled in this country, though valid in the foreign country, and duly celebrated according to the forms required by the law of that country, is absolutely void here. (*Ib.*)

A. and B., British subjects, intermarried. B. died. A. and C. (the lawful sister of B.), being both at the time lawfully domiciled British subjects, went abroad to Denmark, where by the law the marriage of a man with the sister of his deceased wife is valid, and they were duly married according to the law of Denmark:—It was held that under this Act the marriage in Denmark was void. (*Ib.*)

This Act affects all domiciled English subjects wherever they may be transiently resident. It does not affect them when actually domiciled in British colonies, acquired by conquest, where a different law exists. (*Ib.*)

Conversely, a marriage duly solemnized in England is not void, because the parties, being foreigners, contracted it in England in order to evade the laws of the country to which they belonged, and in which they were domiciled. (*Simonin v. Mallac*, 29 L. J., Mat. Cas. 97.)

The marriage of a man with a daughter of the half sister of his deceased wife is null and void by this Act. (*Reg. v. Brighton*, 1 B. & S. 447; 30 L. J., M. C. 197.) A marriage within the prohibited degrees of consanguinity or of affinity is null and void, although one of the parties is illegitimate. (*Ib.*)

A native of Marburg, in the electorate of Hesse Cassel, domiciled in England, married in 1835, and in 1836 was naturalized by Act of Parliament. In 1841 he made his will. His wife having died, he went to Frankfort in 1846, and there married a sister by the half-blood of his deceased wife, with a view to subsequent residence in England, such marriage being valid by the law of Frankfort, and by that of Hesse Cassel. Soon after his second marriage he returned to England, where he died in 1856, never having since its acquisition abandoned his English domicile. Letters of administration of the estate and effects of A. hav-

ing been granted by the Prerogative Court of Canterbury, it was held, in a suit instituted for the purpose of recalling such letters, and obtaining probate of the will, that A.'s second marriage was rendered void by this section, and consequently did not revoke his will. (*Mette v. Mette*, 28 *L. J.*, *Prob.* 117.)

A person born of an English marriage with a deceased wife's sister was held not to be legitimate in Scotland as to the succession to real estate. (*Fenton v. Livingstone*, 3 *Macq. H. L. Cas.* 497; 5 *Jur.*, *N. S.* 1183.) Although, prior to this Act, a marriage with a deceased wife's sister could not be questioned after the death of both or either of the parties, it was illegal nevertheless, and, if questioned while both parties were alive, it must have been declared void *ab initio*. (*Ib.*)

The circumstance of one party to the marriage having died did not make the marriage legal, though it precluded the possibility of setting it aside. (*Ib.*)

Affinity is not constituted by mere sexual intercourse without marriage; and therefore a marriage is not void on the ground that before it took place the man had had intercourse with the woman's mother. (*Wing v. Taylor*, 2 *S. & T.* 278; 30 *L. J.*, *Mat. Cas.* 258.)

By the 7 & 8 Vict. c. 56 (29th of July, 1844), after reciting that doubts are entertained whether banns of matrimony can be published or marriages be solemnized in churches or chapels, to which districts have been or may hereafter be assigned under the 1 & 2 Will. 4, c. 38, and that it is expedient to remove such doubts, it is enacted (sect. 1), that in every case in which a district has been or shall be assigned to any church or chapel under the provisions of the said last-mentioned Act, it shall be lawful for her Majesty's commissioners for building new churches, with the consent of the bishop of the diocese, in every such case as has come or shall come before the said commissioners under the provisions of the said last-mentioned Act, and for the said bishop in every such other case, to determine whether banns of matrimony shall be published and marriages solemnized in any such church or chapel aforesaid or not.

Sect. 2. That when and so soon as it shall be determined that banns of matrimony may be published and marriages solemnized in any such church or chapel, the bishop of the diocese within which such church or chapel shall be locally situated, whether in any parish or extra-parochial place, or otherwise, shall certify the same, and such certificate shall be kept in the chest of the church or chapel with the books of registry thereof, and a copy thereof shall be entered in the books of the registry of banns and marriages, and a duplicate of such certificate shall be registered in the registry of the diocese, and such certificate shall be deemed and taken to be conclusive evidence in all Courts, and in all questions relating to any banns published or marriages solemnized in any such church or chapel, that the same might according to law respectively be published and solemnized in such church or chapel, and that all banns published and marriages solemnized in any such church or chapel according to the laws and canons in force within this realm in that behalf shall after the granting of such certificate be good to all intents and purposes whatsoever: Provided always, that no banns or marriages respectively published or solemnized according to the laws and canons in force within the realm in that behalf in any church or chapel in which the same are authorized to be respectively published, solemnized and had by the said recited Acts or this Act, or either of them, shall be invalid by reason of any such certificate not having been duly given or registered or entered, as hereinbefore required: provided also, that all fees, dues, offerings, and other emoluments on account of such marriages, whether of right or custom, belonging to the incumbent or clerk of any parish, chapelry or place in which such church or chapel has been erected, shall be received by or for or on account of such in-

1. Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.

Where a district is assigned under 1 & 2 Will. 4, c. 38, the church building commissioners or the bishop to decide as to banns and marriages.

Proceedings in cases where it shall be determined that banns may be published and marriages solemnized.

How fees to be disposed of.

1. Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.

cumbent or clerk respectively, and be paid over to them, except such of the said fees, dues, offerings or other emoluments, or such portions thereof, as the said commissioners, with the consent of the bishop of the diocese, the patron and the said incumbent respectively, in those cases which shall come before the said commissioners by order made under their common seal, or the bishop of the diocese alone, with the consent of the patron and incumbent, in all other cases, by order under his hand and seal, shall assign to the minister of such church or chapel; and every such instrument of assignment shall be registered in the registry of the bishop of the diocese within which the said church or chapel shall be locally situated: Provided always, that nothing hereinbefore contained shall be construed to take away from existing parish clerks any fees, dues, or emoluments, to which they are now by law or custom entitled.

The validity of marriages in certain chapels with districts assigned to them not to be questioned.

Sect. 3. And whereas, by error, banns have been published, and divers marriages have been solemnized, in chapels with districts assigned to them under the provisions of the hereinbefore recited Acts or some of them, but in which chapels banns could not be legally published, nor marriages by law be solemnized; and it is expedient to remove all doubts arising from the circumstances aforesaid, touching the validity of such marriages; be it therefore enacted, that banns already published, and marriages already solemnized, in such chapels as aforesaid, shall not hereafter be questioned on account of the said banns having been published, or the said marriages solemnized, in any such chapel as aforesaid; and the minister or ministers who solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceedings or penalties whatsoever, by reason thereof; and the registers of all marriages so solemnized as aforesaid, or copies of such registers, shall be received in all Courts of law and equity as evidence of such marriages respectively.

Omissions to authorize marriages in chapels may be cured by supplemental order.

Sect. 4. That where a chapelry has been already or shall hereafter be assigned to any chapel under the provisions of the hereinbefore recited Act passed in the fifty-ninth year of the reign of king George the third, and the order in council assigning such chapelry does not direct that marriages may be performed in such chapel, it shall be lawful for her Majesty, by any supplemental order in council, on a representation to be made to her by the said commissioners, with the consent of the bishop of the diocese, to order that marriages may be performed thereafter in such chapel; and that all the fees arising therefrom, or a part thereof, should thereafter belong and be paid to the minister of such chapel, or after the next avoidance of the parish church, or that all or a portion of such fees should belong and be paid to the incumbent of such parish church; and all the laws in force relating to banns of marriage, and marriages in district chapels, and the registering thereof, shall apply to marriages performed under such supplemental order in council.

In any representation to the Queen in council, etc., the number of the section of the Act under which such representation, etc., is made need only be recited.

Sect. 5. That in any representation to her Majesty in council, or in any order of council to be made thereon, or in any other matter or thing done under their common seal by the said commissioners under the authority of the hereinbefore recited Acts or any other Act of Parliament, it shall be sufficient to refer to the section or sections as numbered in copies printed by the Queen's printer of the Act or Acts under the authority whereof such representation or order in council is made, or such matter or thing done, and it shall not be necessary to recite any of the provisions of such section or sections.

Every order in council under the Church Building Acts to be inserted in the London Gazette, and regis-

Sect. 6. That every order in council under the provisions of the hereinbefore recited Acts or any of them, or under the provisions of any other of the Church Building Acts, shall, as soon as may be after the making thereof by her Majesty in council, be inserted and published in the London Gazette in like manner as any order in council made

under the Acts regulating the proceedings of the ecclesiastical commissioners of England is published in such Gazette, and it shall not be necessary to enrol in the Court of Chancery any map or plan or description of the boundaries of any division or district formed under the provisions of the hereinbefore recited Acts, or any other of the Church Building Acts; and a map or plan on which shall be marked such boundaries, and which shall be sealed with the common seal of the said commissioners for building new churches, and the order in council annexed thereto, shall be registered in the registry of the diocese in the manner directed by the 3 & 4 Vict. c. 113, and shall be subject to such and the like provisions in all respects relating thereto as are contained in the same Act: Provided always, that nothing in this Act contained shall be taken to repeal or affect any of the authorities contained in 6 & 7 Will. 4, c. 85.

By the 14 & 15 Vict. c. 97, s. 25, it was enacted, that where by error, and without fraud, banns of matrimony have been published or marriages solemnized in the church of any parish or district in which church banns could not legally be published nor marriages legally solemnized, the banns of matrimony already published, and marriages already solemnized in such church as aforesaid, shall not, except where any action, suit, or other proceeding in relation to the validity of any such marriage, was pending on the 19th of June, 1851, be questioned on account of the said banns having been published, or the said marriages solemnized in any church as aforesaid, or the ministers who solemnized the same, shall not be liable to any ecclesiastical censure, or to any other proceedings or penalties whatsoever by reason thereof; and the registers of all marriages so solemnized as aforesaid, except as aforesaid, or copies of such registers, shall be received in all Courts of law and equity as evidence of such marriages respectively (*a*).

By the 20 Vict. c. 19, s. 9, it is enacted that, where any extra-parochial place has belonging to or within it any church or chapel of the Church of England, the bishop of the diocese within which such church or chapel shall be locally situate may, if he think fit, authorize by writing under his hand and seal the publication of banns and the solemnization of marriages by banns or licence in such church or chapel of persons residing within such extra-parochial place, and such written authorization shall be registered in the registry of the diocese.

Sect. 10. Provided always, that all provisions now in force or which may hereafter be established by law, relative to providing and keeping marriage-registers in any parish churches, shall extend and be construed to extend to any church or chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid in the same manner as if the same were a parish church, and everything required by law to be done relative thereto by the churchwardens of any parish church shall be done by the churchwarden or chapelwarden or other officer exercising analogous duties in such church or chapel, or if there shall be no such officer, then by such person as shall be appointed in that behalf by the bishop of the diocese.

By the 23 Vict. c. 24, after reciting that doubt may arise whether, under the 20 Vict. c. 19, it was lawful for the bishop to licence chapels for marriages between parties, one only of whom should be resident in such extra-parochial place, and whether the licence of chapels for the marriage of parties resident in such extra-parochial place authorized marriages between parties, one of whom only should be so resident, it is enacted that the authority given by the bishop, in consequence of the said recited Act for the publication of banns and the solemnization of marriages by banns or licence in such church or chapel, shall be construed to extend to and authorize marriages in such churches or chapels between

1. *Of Marriages solemnized by Banns or Licence, other than a Registrar's Certificate, etc.*

tered with a map and description of boundaries, but the map not required to be enrolled in chancery.

Not to affect 6 & 7 Will. 4, c. 85, as to licensing churches, etc., for solemnization of marriages.

Legality of marriages.

(a) See the 24 & 25 Vict. c. 16, s. 4, *post*, 858.

2. Of Mar-
riages solemn-
ized under a
Registrar's
Certificate,
etc.

parties both or either of them being resident in such extra-parochial place, and all such marriages so had shall be deemed valid in like manner as if such extra-parochial place had been a parish: Provided, that when the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts, the banns for such marriage shall be published in the church or chapel authorized under the provisions of the said recited Act, in which the marriage is intended to be celebrated, as well as in the chapel of the other district, licensed under the provisions of one of the statutes in such case made and provided, where one of the parties then is resident, and if there be no such chapel, then in the church or chapel in which the banns of such last-mentioned party might be legally published, if no such statute had been passed.

Sect. 2. The provisions in the statute 6 & 7 Will. 4, c. 85, s. 25, shall apply to such marriages as in this Act mentioned.

By the 24 Vict. c. 16, s. 4, reciting that, by error, banns have been published and marriages have been solemnized in churches and chapels duly consecrated, but in which churches or chapels banns cannot be legally published nor marriages by law be solemnized, it is enacted, that all banns already published and all marriages already solemnized in such churches and chapels as aforesaid, shall not hereafter be questioned on account of the said banns having been published or the said marriages solemnized in a church or chapel not legally authorized for the publication of banns and solemnization of marriages, and the minister or ministers who solemnized the same shall not be liable to any ecclesiastical censures, or to any proceedings or penalties by reason thereof, provided he or they be rightly ordained; and the registers of all marriages so solemnized as aforesaid, or copies of such registers, shall be received in all Courts of law and equity as evidence of such marriages respectively: Provided always, that nothing herein contained shall extend or be construed to extend to authorize the publication of banns or solemnization of marriages in any of such churches or chapels, or in the said church or chapel called Trinity Church, Rainow, hereafter.

II. Of Marriages solemnized under a Registrar's Certificate, etc., under the 6 & 7 Will. 4, c. 85.

By the 6 & 7 Will. 4, c. 85, intituled, "An Act for Marriages in England" (17th August, 1836), reciting, whereas it is expedient to amend the law of marriages in England; it is enacted, that after the 1st day of March, in the year 1837 (*a*), notwithstanding anything in this Act contained, all the rules prescribed by the rubric concerning the solemnizing of marriages, shall continue to be duly observed by every person in holy orders of the Church of England who shall solemnize any marriage in England: Provided always, that where by any law or canon in force before the passing of this Act, it is provided that any marriage may be solemnized after publication of banns [*ante*, 840], such marriage may be solemnized in like manner on production of the registrar's (*b*) certificate as hereinafter provided (*c*); provided also, that nothing in this Act con-

After 1st March, 1837, all rules prescribed by the rubric to continue to be observed.

Marriages may be solemnized on production of registrar's certificate.

(*a*) By the 7 & 8 Will. 4, c. 1, this Act was suspended until the last day of June, 1837.

(*b*) This must mean the superintendent registrar. See the 7 Will. 4 & 1 Vict. c. 22, s. 36, *post*, 873.

(*c*) An indictment against a clergyman for refusing to marry, should aver that the parties might lawfully be married; and the parties must give due notice of their intention to be at the church at a specified time.

tained shall affect the right of the Archbishop of Canterbury and his successors, and his and their proper officers, to grant special licences to marry at any convenient time and place, or the right of any surrogate or other person now having authority to grant licences for marriages.

Sect. 2. The Society of Friends, commonly called Quakers, and also persons professing the Jewish religion, may continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively; and every such marriage is hereby declared and confirmed good in law, provided that the parties to such marriage be both of the said society, or both persons professing the Jewish religion respectively: Provided also, that notice to the registrar (*b*) shall have been given, and the registrar's certificate shall have issued in manner hereinafter provided.

Sect. 3. The superintendent registrar of births and deaths of every union, parish, or place, shall be, in right of his office, superintendent registrar of marriages within such union, parish, or place, and that such union, parish, or place, shall be deemed the district of such superintendent registrar of marriages.

Sect. 4. In every case of marriage intended to be solemnized in England after the said 1st day of March, according to the rites of the Church of England (unless by licence or by special licence, or after publication of banns), and in every case of marriage intended to be solemnized in England after the said 1st day of March, according to the usages of the Quakers or Jews (*a*), or according to any form authorized by this Act, one of the parties shall give notice (*c*) under his or her hand

2. Of Marriages solemnized under a Registrar's Certificate, etc.

Marriages of Quakers and Jews (*a*).

Superintendent registrar of births to be superintendent registrar of marriages.

Notice of every intended marriage to be given to the superintendent registrar of the district.

(*Reg. v. James*, 2 Den. C. C. 1; 19 L. J., M. C. 179; and see *Davis v. Black*, 1 Q. B., 911, ante, 840.)

(*a*) Marriages of Quakers and Jews may be by licence. (See the 19 & 20 Vict. c. 119, s. 21, *post*, 881.) By the 10 & 11 Vict. c. 58, all marriages of Quakers and Jews solemnized before the 1st of July, 1837, are declared to be good in law to all intents and purposes whatsoever, provided that the parties to such marriages were both Quakers or both Jews respectively. By the 23 Vict. c. 18, s. 1, it is enacted, that from and after the 30th of June, 1860, marriages may be contracted and solemnized according to the usages of the said Society of Friends, commonly called Quakers, in England and Ireland respectively, not only in the case provided for by the said recited provisions, but also in cases where one only or where neither of the parties to the marriage shall be a member of the said society: Provided always, that the party or parties who shall not be a member or members of the said society, shall profess with or be of the persuasion of the said society: Provided also, that no person who is not a member of the said society, shall be married according to the usages thereof, unless he or she shall be authorized thereto, under or

in pursuance of some general rule or rules of the said society in England and Ireland respectively, and a copy of such general rule or rules purporting to be signed by the recording clerk for the time being of the said society in London and in Dublin respectively, shall be admitted as evidence of such general rule or rules in all proceedings touching the validity of any such marriage.

2. All the enactments now in force whether contained in the said recited Acts or in any other Act or Acts of Parliament, and relating to marriages contracted and solemnized according to the usages of the said society in England and Ireland respectively, and to the registration thereof, so far as the same are not inconsistent with this Act, shall extend and be applicable to every marriage contracted and solemnized by the authority of this Act in England and Ireland respectively, as fully and effectually as if the same enactments were repealed herein.

(*b*) This is to be read as if the word "superintendent" were inserted before the word "registrar." (7 Will. 4 & 1 Vict. c. 22, s. 1, *post*, 869.)

(*c*) This form and the requisites of this notice are regulated by the 19 & 20 Vict. c. 119, s. 1, *post*, 875.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

in the form of schedule (A.) (a) to this Act annexed, or to the like effect, to the superintendent registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding, or if the parties dwell in the districts of different superintendent registrars, shall give the like notice to the superintendent registrar of each district, and shall state therein the name and surname (b), and the profession or condition of each of the parties intending marriage, the dwelling-place of each of them, and the time, not being less than seven days, during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

Superintendent registrar to keep notices in a book.

Sect. 5. The superintendent registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be for that purpose furnished to him by the registrar-general, to be called "The Marriage Notice Book," the cost of providing which shall be defrayed in like manner as the cost of providing register books of births and deaths (c); and the marriage notice book shall be open at all reasonable times without fee to all persons desirous of inspecting the same; and for every such entry the superintendent registrar shall be entitled to have a fee of 1s.

Sect. 6, relating to the reading of the notices at the meetings of guardians is repealed by the 19 & 20 Vict. c. 119, s. 21.

After seven days, or twenty-one days, certificate of notice to be given upon demand.

Sect. 7. After the expiration of seven days if the marriage is to be solemnized by licence, or of twenty-one days if the marriage is to be solemnized without licence, after the entry of such notice, the superintendent registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, shall issue under his hand a certificate in the form of schedule (B.) (d) to this Act annexed, provided that no lawful impediment be shown to the satisfaction of the superintendent registrar why such certificate should not issue, and provided that the issue of such certificate shall not have been sooner forbidden in manner hereinafter mentioned by any person or persons authorized in that behalf as hereinafter is provided (e); and every such certificate shall state the particulars set forth in the notice, the day on which the notice was entered, and that the full period of seven days or of twenty-one days (as the case may be) has elapsed since the entry of such notice, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have a fee of 1s.

Forms of certificates to be furnished.

Certificates for marriage by licence to be distinguishable from other certificates.

Sect. 8. The registrar-general shall furnish to every superintendent registrar a sufficient number of forms of certificates, the cost of which shall be accounted for by the superintendent registrar to the registrar-general (f); and in order to distinguish the certificates to be issued for marriages by licence from the certificates to be issued for marriages without licence, a water-mark in the form of the word "licence," in Roman letters, shall be laid and manufactured in the substance of the paper

(a) This form is superseded by that given in the 19 & 20 Vict. c. 119, *post*, 883.

(b) See note (a), *ante*, p. 842, as to the effect of a total or partial variation of the name or surname.

(c) See the 6 & 7 Will. 4, c. 86, s. 30, and the 21 & 22 Vict. c. 25, s. 6,

Vol. V., tit. "Registers."

(d) This form is superseded by that given in the 19 & 20 Vict. c. 119, *post*, 884.

(e) See sects. 9 & 10, *post*, 861.

(f) The part of this section relating to costs is repealed by the 21 & 22 Vict. c. 25, s. 6.

on which the certificates to be issued for marriage by licence shall be written or printed; and every certificate to be issued for marriage by licence shall be printed with red ink, and every certificate to be issued for marriage without licence shall be printed with black ink, and such other distinctive marks between the two kinds of certificates shall be used from time to time as shall seem fit to the registrar-general (a).

Sect. 9. Any person authorized in that behalf may forbid the issue of the superintendent registrar's certificate, by writing at any time before the issue of such certificate the word "forbidden," opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorized; and in case the issue of any such certificate shall have been so forbidden, the notice and all proceedings thereupon shall be utterly void.

Sect. 10. After the said first day of March, the like consent shall be required to any marriage in England solemnized by licence, as would have been required by law to marriages solemnized by licence immediately before the passing of this Act (b); and every person whose consent to a marriage by licence is required by law, is hereby authorized to forbid the issue of the superintendent registrar's certificate, whether the marriage is intended to be by licence or without licence.

Sect. 11. After the said first day of March, every superintendent registrar shall have authority to grant licences for marriage in any building registered as hereinafter provided within any district under his superintendence, or in his office, in the form of schedule (C.) (c) to this Act annexed, and for every such licence shall be entitled to have of the party requiring the same the sum of £3 above the value of the stamps necessary on granting such licence; and every superintendent registrar shall, four times in every year, on such days as shall be appointed by the registrar-general, make a return to the registrar-general of every licence granted by him since his last return, and of the particulars stated concerning the parties: Provided always, that no superintendent registrar shall grant any such licence until he shall have given security by his bond, in the sum of £100 to the registrar-general for the due and faithful execution of his office: Provided also, that nothing herein contained shall authorize any superintendent registrar to grant any licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the church of England or in any church or chapel belonging to the church of England, or licensed for the celebration of divine worship according to the rites and ceremonies of the church of England, or any licence for marriage in any registered building which shall not be within his district.

Sect. 12. Before any licence for marriage shall be granted by any such superintendent registrar, one of the parties intending marriage shall ap-

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Issue of superintendent registrar's certificate may be forbidden.

Consent.

Superintendent registrar may grant licences for marriage.

Superintendent registrar to give security.

Proviso.

Certificate to be given before the licence is granted.

(a) Section 1 of the 3 & 4 Vict. c. 72, *post*, 874, declares and enacts that it is not and shall not be lawful for any superintendent registrar to give any certificate of notice of marriage where the building in which the marriage is to be solemnized, as stated in the notice, shall not be within the district wherein one of the parties shall have dwelt for the time required by the 6 & 7 Will. 4, c. 85, except as hereinafter is enacted. The superintendent registrar has no power to grant his certificate under this

section in cases where it is proposed that the marriage shall take place out of his district. (*Ex parte Brady*, 8 Dowl. P. C. 332.)

(b) See the 4 Geo. 4, c. 76, ss. 16, 17, and the notes thereon, *ante*, 845, 846. And see sect. 43, *post*, 869, as to forfeiture of rights of property by the guilty party in the case of a fraudulent marriage.

(c) This form is superseded by that given in the 19 & 20 Vict. c. 119, *post*, 885.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

pear personally before such superintendent registrar, and in case the notice of such intended marriage shall not have been given to such superintendent registrar, shall deliver to him the certificate of the superintendent registrar or superintendent registrars to whom such notice shall have been given, and such party shall make oath (a), or shall make his or her solemn affirmation or declaration instead of taking an oath, that he or she believeth that there is not any impediment of kindred or alliance, or other lawful hindrance, to the said marriage, and that one of the said parties hath, for the space of fifteen days immediately before the day of the grant of such licence, had his or her usual place of abode within the district within which such marriage is to be solemnized, and where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, as the case may be; and all such licences and declarations shall be respectively liable to the same stamp duties as licences for marriage granted by the ordinary of any diocese, and affidavits made in order to procure the same.

Caveat may be lodged with superintendent registrar against grant of licence or certificate.

Sect. 13. Any person, on payment of 5s., may enter a caveat (b) with the superintendent registrar against the grant of a certificate or a licence for the marriage of any person named therein; and if any caveat be entered with the superintendent registrar, such caveat being duly signed by or on behalf of the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no certificate or licence shall issue or be granted until the superintendent registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the certificate or licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; provided that in cases of doubt it shall be lawful for the superintendent registrar to refer the matter of any such caveat to the registrar-general, who shall decide upon the same: Provided likewise, that in case of the superintendent registrar refusing the grant of the certificate or licence, the person applying for the same shall have a right to appeal to the registrar-general, who shall thereupon either confirm the refusal or direct the grant of the certificate or licence.

Marriages not to be solemnized until after twenty-one days after entry of notice, unless by licence.

Sect. 14. After the said 1st day of March, no marriage after such notice as aforesaid, unless by virtue of a licence to be granted by the superintendent registrar, shall be solemnized or registered in England until after the expiration of twenty-one days after the day of the entry of such notice as aforesaid; and no marriage shall be solemnized by the licence of any superintendent registrar or registered until after the expiration of seven days after the day of the entry of such notice as aforesaid.

New notice required after three months.

Sect. 15. Whenever a marriage shall not be had within three calendar months after the notice shall have been so entered by the superintendent registrar, the notice and certificate, and any licence which may have been granted thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

(a) See the 7 Will. 4 & 1 Vict. c. 22, s. 30, *post*, 873, empowering the registrar, etc., to administer the oath. And see the 4 Geo. 4, c. 76, ss. 10 & 14, *ante*, 843, 844.

(b) See sect. 37, *post*, 868, as to the consequences of entering a caveat vexatiously.

Sect. 16. The superintendent's certificate, or, in case the parties shall have given notice to the superintendent of different districts, the certificate of each superintendent, shall be delivered to the officiating minister, if the marriage shall be solemnized according to the rites of the church of England; and the said certificate or licence shall be delivered to the registering officer of the people called Quakers for the place where the marriage is solemnized, if the same shall be solemnized according to the usages of the said people; or to the officer of a synagogue by whom the marriage is registered, if the same shall be solemnized according to the usages of persons professing the Jewish religion; and in all other cases shall be delivered to the registrar present at the marriage, as hereinafter provided.

Sect. 17. It shall be lawful for the superintendent registrar of any union, parish, or place, subject to the approval of the board of guardians thereof, to appoint by writing under his hand such person or persons as he may think fit, with such qualifications as the registrar-general, by any general rule, may declare to be necessary, to be a registrar or registrars for the purpose of being present at marriages to be solemnized by virtue of this Act at which the presence of a registrar is made necessary, and every such registrar of marriages shall hold his office during the pleasure of the superintendent registrar by whom he was appointed, or of the registrar-general (a).

Sect. 18. Any proprietor or trustee of a separate building (b), certified according to law as a place of religious worship, may apply to the superintendent registrar of the district, in order that such building may be registered for solemnizing marriages therein, and in such case shall deliver to the superintendent registrar a certificate, signed in duplicate by twenty householders at the least, that such building has been used by them during one year at the least as their usual place of public religious worship, and that they are desirous that such place should be registered as aforesaid, each of which certificates shall be countersigned by the proprietor or trustee by whom the same shall be delivered; and the superintendent registrar shall send both certificates to the registrar-general, who shall register such building accordingly in a book to be kept for that purpose at the general register office; and the registrar-general shall endorse on both certificates the date of the registry, and shall keep one certificate with the other records of the general register office, and shall return the other certificate to the superintendent registrar, who shall keep the same with the other records of his office; and the superintendent registrar shall enter the date of the registry of such building in a book to be furnished to him for that purpose by the registrar-general, and shall give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the *London Gazette*; and for every such entry, certificate, and publication, the superintendent registrar shall receive at the time of the delivery to him of the certificates the sum of £3.

Sect. 19. If at any time subsequent to the registry of any building for solemnizing marriages therein, it shall be made to appear to the satisfaction of the registrar-general that such building has been disused for the public religious worship of the congregation on whose behalf it was registered as aforesaid, the registrar-general shall cause the registry thereof to be cancelled; provided that if it shall be proved to the satisfaction of the registrar-general that the same congregation use instead thereof

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Superintendent registrar's certificate or licence to be delivered to the person by or before whom the marriage is solemnized.

Superintendent registrar may appoint registrars of marriages.

Places of worship may be registered for solemnizing marriages therein.

On removal of the same congregation the new place of worship may be immediately registered instead of the one disused.

(a) See 1 Vict. c. 22, s. 22, *post*, 871.

(b) See the 1 Vict. c. 22, s. 35, *post*, 873. By the 19 & 20 Vict. c.

81, s. 13, marriages in a building registered but not certified are declared to be valid.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

some other such building for the purpose of public religious worship, the registrar-general may substitute and register such new place of worship instead of the disused building, although such new place of worship may not have been used for that purpose during one year then next preceding; and every application for cancelling the registry of any such building, or for such substitution and registry of a substituted building, shall be made to the registrar-general by or through the superintendent registrar of the district; and such cancel or substitution, when made, shall be made known by the registrar-general to the superintendent registrar, who shall enter the fact and the date thereof in the book provided for the registry of such buildings, and shall certify and publish such cancel or substitution and registry in manner hereinbefore provided in the case of the original registry of the disused building; and for every such substitution the superintendent registrar shall receive, at the time of the delivery of the certificate from the party requiring the substitution, the sum of £3; and after such cancel or substitution shall have been made by the registrar-general it shall not be lawful to solemnize any marriage in such disused building, unless the same shall be again registered in the manner hereinbefore provided.

Marriages may be solemnized in such registered places, in the presence of some registrar and of two witnesses (a).

Sect. 20. After the expiration of the said period of twenty-one days or of seven days if the marriage is by licence, marriages may be solemnized in the registered building stated as aforesaid in the notice of such marriage between and by the parties described in the notice and certificate, according to such form and ceremony as they may see fit to adopt: Provided nevertheless, that every such marriage shall be solemnized with open doors, between the hours of eight and twelve in the forenoon, in the presence of some registrar of the district in which such registered building is situate, and of two or more credible witnesses; provided also, that in some part of the ceremony, and in the presence of such registrar and witnesses, each of the parties shall declare,

I do solemnly declare, that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.

And each of the parties shall say to the other,

I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife [or husband](b).

Provided also, that there be no lawful impediment to the marriage of such parties.

Marriages may be celebrated before the superintendent registrar.

Sect. 21. Any persons who shall object to marry under the provisions of this Act in any such registered building may, after due notice and certificate issued as aforesaid, contract and solemnize marriage at the office and in the presence of the superintendent registrar and some registrar of the district, and in the presence of two witnesses, with open doors, and between the hours aforesaid, making the declaration and using the form of words hereinbefore provided in the case of marriage in any such registered building.

(a) Evidence, in support of a plea of coverture, that the defendant was married in a Catholic chapel, according to the rites of the Roman Catholic Church, to a person with whom she afterwards lived as wife, is *prima facie* sufficient to show a valid marriage under this Act, as the law will presume that the chapel was registered and the registrar present,

as required by this Act. (*Sichel v. Lambert*, 33 L. J., C. P. 137.)

(b) See the 1 Vict. c. 22, s. 23, *post*, 871, as to marriages in the Welsh tongue.

A marriage between deaf and dumb persons was held to be valid, although, of course, they could not vocally repeat the words of the marriage service. (*Harrod v. Harrod*, 1 Kay & J. 4.)

Sect. 22. The registrar shall be entitled for every marriage which shall be solemnized under this Act in his presence to have from the parties married the sum of 10s., if the marriage shall be by licence, and otherwise the sum of 5s.

Sect. 23. The registrar shall forthwith register every marriage solemnized in manner aforesaid in his presence in a marriage register book to be furnished to him for that purpose from time to time by the registrar-general, according to the form provided for the registration of marriages by an Act made in this present session of Parliament, intituled, "An Act for Registering Births, Deaths, and Marriages in England," the cost of which shall be defrayed in like manner as the cost of providing register books of births and deaths (*a*); and every entry of such marriage shall be signed by the person by or before whom the marriage shall have been solemnized, if there shall be any such person, and by the registrar, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book.

Sect. 24. In every year, on such days as shall from time to time be appointed by the registrar-general within one calendar month next after the 1st day of April, the 1st day of July, the 1st day of October, and the 1st day of January respectively, every registrar shall make and deliver to the superintendent registrar of his district a true copy, certified by him under his hand, according to the form of schedule (D.) to this Act annexed, of all the entries of marriage in the register book kept by him since the last delivery, and the superintendent registrar shall verify the same, and if found to be correct shall certify the same under his hand to be a true copy; and if there shall have been no marriage registered since the delivery of the last certified copy, the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and countersigned by him; and the registrar shall keep safely the said register book until it shall be filled, and shall then deliver it to the superintendent registrar, to be kept by him with the records of his office.

Sect. 25. After any marriage shall have been solemnized, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of either of the parties previous to the marriage within the district wherein such marriage was solemnized for the time required by this Act, or of the consent of any person whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage (*b*).

Sect. 26. And whereas it is expedient that provision should be made, under proper restrictions, for relieving the inhabitants of populous districts remote from the parish church, or from any chapel wherein marriages may be lawfully celebrated according to the rites and ceremonies of the church of England, from the inconvenience to which they may be thereby subjected in the solemnization of their marriages; be it therefore enacted, that, with the consent under the hand and seal of the patron and incumbent respectively of the church of the parish or district in which may be situated any public chapel with or without a chapelry thereunto annexed, or any chapel duly licensed for the celebration of divine service according to the rites and ceremonies of the church of England, or any chapel the minister whereof is duly licensed to officiate therein according to the rites and ceremonies of the church of England, or without such consent after two calendar months' notice in writing

2. Of Marriages solemnized under a Registrar's Certificate, etc.

Marriage fees to the registrar.

Registrar to register all marriages solemnized before him in books to be sent by the registrar-general.

Copies of the marriage register book to be given quarterly to the superintendent registrar.

Proof of residence of parties, or consent, not necessary to establish the marriage.

Bishops, with consent of patrons, may license chapels for the solemnization of marriages in populous places.

(*a*) So much of this section as relates to costs is repealed by the 21 & 22 Vict. c. 25, s. 6.

(*b*) See the 4 Geo. 4, c. 76, s. 26, ante, 849.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

given by the registrar of the diocese to such patron and incumbent respectively, the bishop of the diocese may, if he shall think it necessary for the due accommodation and convenience of the inhabitants, authorize by a licence under his hand and seal the solemnization of marriages in any such chapel for persons residing within a district the limits whereof shall be specified in the bishop's licence, and under such provisions as to the amount, appropriation, or apportionment of the dues, and as to other particulars, as to the said bishop may seem fit, and as may be specified in the said licence; provided that it shall be lawful for any patron or incumbent who shall refuse or withhold consent to the grant of any such licence to deliver to the bishop, under his or her hand and seal, a statement of the reasons for which such consent shall have been so refused or withholden; and no such licence shall be granted by any bishop until he shall have inquired into the matter of such reasons; and every instrument of consent of the patron and incumbent, or, if such consent be refused or withholden, a copy of the notice under the hand of the registrar, and every statement of reasons alleged as aforesaid by the patron or incumbent, with the bishop's adjudication thereupon under his hand and seal, shall be registered in the registry of the diocese; and thenceforth and until the said licence be revoked, marriages solemnized in such chapel shall be as valid to all intents and purposes as if the same had been solemnized in the parish church, or in any chapel where marriages might heretofore have been legally solemnized.

Appropriation of fees on marriages performed in such chapels.

Sect. 27. All fees, dues, and other emoluments on account of the solemnization of marriages which belong to the incumbent or clerk respectively of any church or chapel in any parish or district within which the solemnization of marriages shall be authorized as aforesaid shall respectively be received, until the avoidance of such church or chapel next after the passing of this Act, for and on account of such incumbent, and, until the vacancy in the office of clerk next after the passing of this Act, for and on account of such clerk, and be paid over to them, except such portion of the fees, dues, or other emoluments as the said bishop of the diocese, with the consent of the said incumbent and clerk respectively, shall in such aforesaid licence assign to the minister and clerk respectively of the chapel in which the solemnization of marriages shall be authorized as aforesaid; and that it shall be lawful for the said bishop, in and by such licence, without any such consent, to declare that from and after such next avoidance or vacancy respectively the whole or such part of the fees, dues, and other emoluments on account of the solemnization of marriages in such last-mentioned chapel as shall be specified in such licence, shall be receivable, and the same shall thenceforth be received by or for the minister and clerk of such chapel respectively.

Patron or incumbent may appeal to the archbishop against such licences.

Sect. 28. When the said bishop shall authorize the solemnization of marriages in any such chapel as aforesaid, without the consent under the hand and seal of the patron and incumbent respectively, it shall be lawful for them or either of them to appeal within one calendar month to the archbishop of the province, who shall hear the same in a summary manner, and shall make such order confirming, revoking, or varying the licence so given, as to him shall seem meet and expedient, which order shall be registered in the registry of the diocese, and shall be conclusive and binding on all parties whatsoever.

Notice of such licences to be affixed in chapels.

Sect. 29. There shall be placed in some conspicuous part in the interior of every chapel in respect of which such licence shall be given as aforesaid a notice in the words following: "Marriages may be solemnized in this chapel" (a).

(a) See the 1 Vict. c. 22, s. 33, *post*, 873.

Sect. 30. All provisions which shall from time to time be in force relative to marriages, and to providing, keeping, and transmitting register books and copies of registers of marriages solemnized in any parish church, shall extend to any chapel in which the solemnization of marriages shall be authorized as aforesaid, in the same manner as if the same were a parish church, and everything required by law to be done relating thereto by the rector, vicar, curate, or churchwardens respectively of any parish church, shall be done by the officiating minister, chapelwarden, or other person exercising analogous duties in such chapel respectively.

Sect. 31. Provided always that, notwithstanding any such licence as aforesaid to solemnize marriages in any such chapel, the parties may, if they think fit, have their marriage solemnized in the parish church, or in any chapel in which heretofore the marriage of such parties or either of them might have been legally solemnized (a).

Sect. 32. Any such licence or order may at any time be revoked by writing under the hand and seal of the bishop of the diocese, with the consent in writing of the archbishop of the province; and such revocation and consent shall be registered in the registry of the diocese, the registrar whereof shall notify the same in writing to the minister officiating in the chapel, and shall also give public notice thereof by advertisement in some newspaper circulating within the county, and in the *London Gazette*, and thenceforth the authority to solemnize marriages in such chapel shall cease and determine.

Sect. 33. In case of the revocation of the licence to solemnize marriages in any such chapel, all registers of marriages solemnized therein under such licence which shall be in the custody or possession of the minister of such chapel at the time of such revocation shall forthwith be transmitted to the incumbent or officiating minister of the parish church, and shall thenceforth be preserved, and in all other respects dealt with in the same manner, and be of the same force and validity, to all intents and purposes, as if they had been originally made and deposited with such incumbent or officiating minister; and that such incumbent or minister shall, when he next transmits to the superintendent registrar copies of the registers of marriages solemnized in such parish church, also therewith transmit copies of all such entries as shall have been made in such first-mentioned registers subsequent to the date of the last entry a copy whereof was transmitted to the superintendent registrar, and shall also transmit to him one copy of every register book so transmitted to him of which no copy shall have been already transmitted to the superintendent registrar, having first signed his name at the foot of the last entry therein.

Sect. 34. The registrar of every diocese shall within fifteen days after the said 1st day of March, and also within fifteen days after the 1st day of January in every succeeding year, make out and send through the post office, directed to the registrar-general of births, deaths, and marriages, at his office, a list of all chapels belonging to the church of England within that diocese wherein marriages may lawfully be solemnized according to the rites and ceremonies of the church of England, and shall distinguish in such list which have a parish, chapelry, or other recognized ecclesiastical division annexed to them, and which are chapels licensed by the bishop under this Act, and shall state therein the district for which each of such chapels is licensed according to the description thereof in the licence; and the registrar-general shall in every year

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Marriages performed in such chapels to be under the same regulations as those performed in parish churches.

Option to parties to be married at parish church.

Bishop, with consent of archbishop, may revoke such licences;

in which case registers to be sent to the incumbent of the parish church.

Registrars of dioceses to send to the registrar office, yearly, lists of licensed chapels within their districts.

List of all cha-

(a) No marriage can be solemnized without the consent of the minister, etc., in any church or registered building, and persons married by the

registrar may add the religious ceremony of their church or persuasion. (19 & 20 Vict. c. 119, ss. 11 and 12, *post*, 878, 879.)

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

pels and buildings registered to be printed.

Marriages under this Act cognizable.

Registrar may ask certain particulars of parties.

Persons vexatiously entering caveat liable to costs and damages.

Persons making false declarations, etc., guilty of perjury.

Persons unduly solemnizing marriage guilty of felony.

Superintendent registrars unduly issuing certificates guilty of felony.

make out and cause to be printed a list of all such chapels, and also of all places of public worship registered under the provisions of this Act, and shall state in such list the county and registrar's district within which each chapel or registered building is situate, and shall add also the names and places of abode of the registrar and deputy registrars of each district, and of the superintendent registrar; and a copy of such list shall be sent to every registrar and superintendent registrar.

Sect. 35. Every marriage solemnized under this Act shall be good and cognizable in like manner as marriages before the passing of this Act according to the rites of the church of England.

Sect. 36. It shall be lawful for the registrar before whom any marriage is solemnized according to the provisions of this Act to ask of the parties to be married the several particulars required to be registered touching such marriage (a).

Sect. 37. Every person who shall enter a caveat with the superintendent registrar against the grant of any licence or issue of any certificate on grounds which the registrar-general shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings, and for damages, to be recovered in a special action upon the case by the party against whose marriage such caveat shall have been entered (b).

Sect. 38. Every person who shall knowingly and wilfully make any false declaration or sign any false notice or certificate required by this Act, for the purpose of procuring any marriage, and every person who shall forbid the issue of any superintendent registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury.

Sect. 39. Every person who after the said 1st day of March shall knowingly and wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the church of England, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony (except in the case of a marriage between two of the Society of Friends, commonly called Quakers, according to the usages of the said society, or between two persons professing the Jewish religion, according to the usages of the Jews); and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage in the absence of a registrar of the district in which such registered building or office is situated shall be guilty of felony; and every person who shall knowingly and wilfully solemnize any marriage in England after the said 1st day of March (except by licence) within twenty-one days after the entry of the notice to the superintendent registrar as aforesaid, or if the marriage is by licence within seven days after such entry, or after three calendar months after such entry, shall be guilty of felony.

Sect. 40. Every superintendent registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered by him as aforesaid, or any certificate for marriage by licence before the expiration of seven days after the entry of the notice, or any certificate for marriage

(a) See the 6 & 7 Will. 4, c. 86, Schedule C., Vol. F., tit. "Registers."

(b) By the 7 Will. 4 & 1 Vict. c. 22, s. 5, *post*, 870, a copy of the decla-

ration of the registrar-general, sealed with the seal of his office, is evidence in the action.

without licence before the expiration of twenty-one days after the entry of the notice, or any certificate, the issue of which shall have been forbidden as aforesaid by any person authorized to forbid the issue of the registrar's certificate, or who shall knowingly and wilfully register any marriage herein declared to be null and void, and every registrar (*a*) who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the registrar as aforesaid, or who shall knowingly and wilfully solemnize in his office any marriage herein declared to be null and void, shall be guilty of felony.

Sect. 41. Every prosecution under this Act shall be commenced within the space of three years after the offence committed.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Limitation of prosecution.

Sect. 42. If any persons shall knowingly and wilfully intermarry after the said 1st day of March under the provisions of this Act in any place other than the church, chapel, registered building, or office or other place specified in the notice and certificate as aforesaid, or without due notice to the superintendent registrar, or without certificate of notice duly issued, or without licence, in case a licence is necessary under this Act, or in the absence of a registrar or superintendent registrar where the presence of a registrar or superintendent registrar is necessary under this Act, the marriage of such persons, except in any case hereinafter excepted, shall be null and void: Provided always, that nothing herein contained shall extend to annul any marriage legally solemnized according to the provisions of an Act passed in the fourth year of his late Majesty George the Fourth, intituled, "An Act for amending the Laws respecting the Solemnization of Marriages in England."

Marriages void if unduly solemnized with the knowledge of both parties (*b*).

Sect. 43. If any valid marriage shall be had under the provisions of this Act by means of any wilfully false notice, certificate, or declaration made by either party to such marriage, as to any matter to which a notice, certificate, or declaration is herein required, it shall be lawful for his Majesty's attorney-general or solicitor-general to sue for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage; and the proceedings thereupon and consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized by licence before the passing of this Act according to the rites of the church of England.

In cases of fraudulent marriages, the guilty party to forfeit all property accruing from the marriage, as in 4 Geo. 4, c. 76.

Sect. 44. This Act shall be taken to be part of the said Act for registering births, deaths, and marriages, as fully and effectually as if incorporated therewith, and that all the provisions and penalties of the said Act, relating to any registrar or register of marriages, or certified copies thereof, shall be taken to extend to the registrars and registers of marriages to be solemnized under this Act, and to the certified copies thereof, so far as the same are applicable thereunto.

Provisions of Registry Act extended to this Act.

Sect. 45. This Act shall extend only to England, and shall not extend to the marriage of any of the royal family.

To extend to England only. Royal family exempt.

By the 7 Will. 4 & 1 Vict. c. 22, entitled "An Act to Explain and Amend Two Acts passed in the last Session of Parliament, for Marriages, and for Registering Births, Deaths, and Marriages in England"

1 Vict. c. 22 (*c*).
6 & 7 Will. 4, c. 85 (*d*), 6 & 7 Will. 4, c. 86.

(*a*) Extended by 7 Will. 4 & 1 Vict. c. 22, s. 3, *post*, 870, to the superintendent registrar.

(*b*) See note (*a*), *ante*, 842, and note (*b*), *ante*, 846.

(*c*) See this Act, tit. "Registers," Vol. V.

(*d*) The other sections of this Act not noticed under this title of "Marriage," are applicable to the registration of births, etc.; and the office and duty of registrars, etc., and will be found under tit. "Registers," Vol. V.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Meaning of the words notice to the registrar and registrar's certificate.

Certificate of baptismal name to be made by registrar or superintendent registrar, as the case may be.

Superintendent registrars unduly issuing licences, or solemnizing marriages, guilty of felony.

Registrar-general's certificate of frivolous caveat to be evidence.

Privilege of franking extended to United Kingdom.

Registrar-géné-

[30th June, 1837], reciting, that by an Act made in the last session of Parliament, intituled "An Act for Marriages in England," and by another Act, intituled "An Act for Registering Births, Deaths, and Marriages in England," sundry provisions were made for the duties of superintendent registrars and also of registrars and deputy registrars of births, deaths, and marriages, which several provisions require to be further explained and amended; and that the recited Acts require amendment in other respects; it is enacted, that where, in the said Act for marriages in England, provision is made for giving notice of marriage to any registrar, and where in the last-recited Act, or any schedule thereunto annexed, mention is made of any such notice, or of the registrar's certificate of any such notice, the same shall be construed respectively to mean the notice to be given to the superintendent registrar, and the certificate thereof to be issued by the superintendent registrar, according to the provisions for that purpose contained in the last-recited Act.

Sect. 2. And whereas by the said Act for registering births, deaths, and marriages, it is provided, that, in the case of any child to which any name shall be given in baptism after its birth shall have been registered under the provisions of the said Act, a certificate shall be delivered in manner provided by the said Act, signed by the minister who shall have performed the rite of baptism, and that the registrar shall certify upon the said certificate the additional entry in the register book thereupon required by the said Act to be made, and shall forthwith send the said certificate through the post-office to the registrar-general; be it enacted, that the certificate that such additional entry has been made shall be made and sent as aforesaid by the registrar or superintendent registrar, as the case may be, to whom the minister's certificate shall have been delivered according to the provisions of the said Act.

Sect. 3. That every superintendent registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the superintendent registrar, as provided by the said Act for marriages, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage in the last-recited Act declared to be null and void, shall be guilty of felony.

Sect. 5. That for the purpose of enabling any person to recover costs and damages in any action, as provided by the said Act for marriages, from any person who shall have entered a caveat on frivolous grounds (a) with the superintendent registrar, a copy of the declaration of the registrar general, purporting to be sealed with the seal of the general register office, shall be evidence that the registrar general has declared such caveat to have been entered on frivolous grounds, and that they ought not to obstruct the grant of the licence or issue of the certificate, as the case may be; and such declaration shall have the effect of the declaration required in such case by the said Act for marriages.

Sect. 7. That the registrar-general may receive and send by the general post from and to all ports and places in the United Kingdom of Great Britain and Ireland all letters and packets relating exclusively to the execution of the said Acts for marriages, and for registering births, deaths, and marriages, or of this Act, free from the duty of postage, subject to the provisions and conditions of the said Act for registering births, deaths, and marriages, with respect to letters and packets so received or sent by him from and to places in England.

Sect. 15. That the registrar-general shall have power, subject to the

(a) See the 6 & 7 Will. 4, c. 85, s.37, *ante*, 868.

approval of the commissioners of the treasury, to appoint by writing under his hand a fit person to act as his assistant in the case of the illness of the registrar-general; and every such assistant, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said Acts for marriages, and for registering births, deaths, and marriages, in England, and by this Act, or any of them; except that such assistant shall not have power to make or declare any general rule, or to rescind or alter any order, regulation, or approval, signified and made by the registrar-general in writing under his hand, or to dismiss any person from any office holden during the pleasure of the registrar-general.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

ral may appoint an assistant to act for him in certain cases.

Sect. 16. That every superintendent registrar shall have the power, subject to the approval of the registrar-general, to appoint by writing under his hand, a fit person to act as his deputy in case of the illness or absence of such superintendent registrar; and every such deputy superintendent registrar, whilst so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said Acts for marriages, and for registering births, deaths, and marriages in England, and by this Act, concerning superintendent registrars; and in case of the death of the superintendent registrar, shall act as superintendent registrar until another be appointed; and every superintendent registrar shall be civilly responsible for the acts and omissions of his deputy.

Superintendent registrar may appoint a deputy to act for him in certain cases.

Sect. 22. That the registrar-general shall be authorized to fix from time to time the number of registrars of marriages to be appointed by any superintendent registrar; and no superintendent registrar shall have power to appoint more than the number so fixed for him to appoint (a).

Registrar-general to limit the number of registrars of marriage.

Sect. 23. That the registrar-general, under the direction of one of her Majesty's principal secretaries of state, shall take order that the solemn declaration and form of words provided to be used in the case of marriages under the said Act for marriages be truly and exactly translated into the Welsh tongue, and shall cause the same so translated to be furnished to every registrar of marriages throughout Wales, and in all places where the Welsh tongue is commonly used; and it shall be lawful to use the declaration and form of words so translated, and published by authority, in all places where the Welsh tongue is commonly used or preferred, in such manner and form and to the same intents and purposes as by the said Act is prescribed in the English tongue.

Provision for marriages in the Welsh tongue.

Sect. 24. And whereas by the said Act for marriages in England provision is made for the transmission of notices of marriage to the clerk to the guardians of the poor law union, or of the parish or place comprising the district of a superintendent registrar, and for the reading of the same at certain meetings of such guardians: and whereas it may happen in certain superintendent registrar's districts that there may be no such guardians; be it therefore enacted, that in every such case, but only until the election of such board of guardians and of a clerk to their board, every notice of marriage given according to the provisions of the said Act for marriages, or a true and exact copy thereof, under the hand of the superintendent registrar, shall be suspended in some conspicuous place in the office of the superintendent registrar during seven successive days, if the marriage is to be solemnized by licence, or twenty-one successive days if the marriage is to be solemnized without licence, before any marriage shall be solemnized in pursuance of such notice; and the particulars of every such notice shall be sent by the superintendent registrar to every registrar of marriages within his district, and shall be

Notices of marriage to be suspended in the superintendent registrar's office, instead of being read at the meetings of guardians, and particulars of the same sent to the registrar.

(a) See the 6 & 7 Will. 4, c. 85, s. 17, *ante*, 863.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Certified copies of register books to be made up quarterly.

7 Will. 4, c. 1.

open to the inspection of every one who shall apply at reasonable times to such registrar to inspect the same. [See the 19 & 20 Vict. c. 119, s. 1, *post*, 875.]

Sect. 25, relating to the cost of parochial marriage registers, is repealed by the 21 & 22 Vict. c. 25, s. 6.

Sect. 26. That certified copies of the entries of births, deaths, and marriages, required by the said Acts for marriages, and for registering births, deaths, and marriages, or by an Act passed in this session of Parliament, intituled, "An Act to Suspend for a Limited Time the Operation of Two Acts Passed in the last Session of Parliament for Registering Births, Deaths, and Marriages in England, and for Marriages in England," to be made and delivered to the superintendent registrar, and also the certificates to be made and delivered to the superintendent registrar that there has been no birth, death, or marriage registered since the delivery of the last certificate, shall in every case be made up and refer respectively to the last days of March, June, September, and December, then next preceding, and not to the time of the making or delivery of such certified copy or certificate when made on any subsequent day.

Clergyman to be paid for making register in duplicate.

Sect. 27. And whereas it is required by the said Act for registering births, deaths, and marriages, that every rector, vicar, and curate, shall register in duplicate the particulars of every marriage solemnized by him, one of which registers he is also required to deliver when filled to the superintendent registrar of the district in which such church or chapel may be situated, and also four times in every year to deliver to the said superintendent registrar a true copy, certified by him under his hand, of all the entries of marriages in the register book kept by him since the last certificate; be it enacted, that the said superintendent registrar shall pay or cause to be paid to the said rector, vicar, or curate, the sum of sixpence for every entry contained in such certified copy, which sum shall be reimbursed to the said superintendent registrar by the guardians or overseers of the union, parish, or place, for which he shall be appointed superintendent registrar as aforesaid, in like manner as by the said Act is provided for the payment of the registrar on production of his accounts to the superintendent registrar.

Penalty for neglecting to send certified copies of register books.

Sect. 28. That every person who under the provisions of the said Acts for marriages, and for registering births, deaths, and marriages, or either of them, as amended by this Act, is required to make and deliver to any superintendent registrar a certified copy of the entries of any births, deaths, or marriages registered by him, or the certificate required by the said Acts as amended by this Act, that there have been no entries since the last certificate, and who after being duly required to deliver such certified copy or such certificate as aforesaid, shall refuse or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds, to be recovered as other penalties for offences against the said Acts are made recoverable: Provided always, that in such case a moiety of the penalty shall not go to the informer, but the whole shall go to the registrar general, or such other persons as the commissioners of the treasury shall appoint, for the use of her Majesty.

Certificates, etc., required to be given to any superintendent registrar may be given to any registrar, who is to forward the same, etc.

Sect. 29. That in every case in which any rector, vicar, or curate, is required by either of the said Acts for marriages, and for registering births, deaths, and marriages, or by this Act, to give or deliver any notice, certificate, or certified copy, to any superintendent registrar, it shall be sufficient for such rector, vicar, or curate, to give or deliver the same to some registrar under the superintendence of such superintendent registrar; and every registrar on receiving any such notice, certificate, or certified copy, shall give or deliver the same to the superintendent registrar.

trar; and each superintendent registrar shall direct the registrars of births and deaths under his superintendence quarterly or oftener if he shall think fit or shall be so ordered to do by the registrar-general to collect the notices, certificates, and certified copies, from every rector, vicar, and curate, within his district.

Sect. 30. And for removing of all doubt with regard to the administration of oaths, be it enacted, that every person before whom by the said Acts or either of them an oath is directed to be taken is hereby authorized to administer the same.

Sect. 31. That the prosecution for every offence punishable upon summary conviction by virtue of the said Acts or this Act shall be commenced within three months after the commission of such offence.

Sect. 32. That no stamp duty shall be required, nor shall any duty be chargeable on any licence under the hand and seal of any bishop, or any other instrument necessary for authorizing the solemnization of marriages in any chapel according to the provisions of the said Act for marriages.

Sect. 33. That the banns of marriage of any persons may be published in any chapel licensed by the bishop, according to the provisions of the said Act for marriages, for the solemnization of marriages, in which those persons might lawfully be married; and instead of the notice required by the said Act, the words "Banns may be published and marriages may be solemnized in this chapel," shall be placed in some conspicuous part in the interior of every such chapel (a).

Sect. 34. And whereas doubts may arise whether under the said recited Acts it is lawful for the bishop to license chapels for marriages between parties, one only of whom resides within the district specified in such licence; be it therefore enacted and declared, that all such licences shall be construed to extend to and authorize marriages in such chapels between parties, one or both of whom is or are resident within the said district: Provided always, that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of the said recited Act for the other district within which one of the parties is resident, and if there be no such chapel, then in the church or chapel in which the banns of such last-mentioned party might be legally published if the said recited Act had not been passed.

Sect. 35. And whereas certain provisions are made in the Act intituled "An Act for Marriages in England," relating to the celebration of marriages in separate buildings; be it enacted, that any building which shall have been licensed and used during one year next before registration for public religious worship as a Roman Catholic chapel exclusively shall be taken to be a separate building for the purpose of being registered for the celebration of marriages, notwithstanding the same shall be under the same roof with any other building, or shall form a part only of a building.

Sect. 36. And whereas it is enacted in the said recited Act for marriages in England, that where by any law or canon in force before the passing of the said Act, it is provided that any marriage may be solemnized after publication of banns, such marriage may be solemnized in like manner on production of the registrar's certificate as thereafter

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Authority for administering oaths.

Limitation as to summary convictions.

Stamp duty not payable on licensing chapels for marriages.

Banns may be published in chapels where marriages may be solemnized.

Marriages may be in licensed chapels, though only one of the parties is resident in the district.

Publication of banns where the parties reside in different districts.

Any building used exclusively as a Roman Catholic chapel for one year may be registered for celebration of marriages.

Notice to superintendent registrar, and issue of certificate by him to be used and stand instead of banns

(a) See the 6 & 7 Will. 4, c. 85, s. 29, *ante*, 866.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

provided (a) ; be it enacted, that the giving of notice to the superintendent registrar, and the issue of the superintendent registrar's certificate, as in the said Act and by this Act provided, shall be used and stand instead of the publication of banns to all intents and purposes where no such publication shall have taken place ; and every parson, vicar, minister, or curate in England shall solemnize marriage after such notice and certificate as aforesaid in like manner as after due publication of banns : Provided always, that the church wherein any marriage according to the rites of the Church of England shall so be solemnized shall be within the district of the superintendent registrar by whom such certificate as aforesaid shall have been issued.

3 & 4 Vict. c. 72.

4 Geo. 4, c. 76
(b).

6 & 7 Will. 4,
c. 85.

7 Will. 4 & 1
Vict. c. 22 (c).

Certificate of notice not to be granted for marriage out of the district where the parties dwell, except as hereinafter enacted.

In what case marriage may be solemnized out of the district in which the parties dwell.

By 3 & 4 Vict. c. 72, entitled "An Act to Provide for the Solemnization of Marriages in the Districts in or near which the Parties reside" [7th August, 1840], reciting, whereas by an Act passed in the fourth year of the reign of King George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriage in England," it is provided that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever : and whereas by an Act passed in the seventh year of the reign of his late Majesty, intituled "An Act for Marriages in England," provision is made for marriages intended to be solemnized in England, after notice given, according to the forms authorized by the last-recited Act (see sects. 7 and 8, *ante*, 860), which Act has been explained and amended by an Act passed in the first year of the reign of her present Majesty : and whereas it is expedient to restrain marriages under the said Act of his late Majesty from being solemnized out of the district in which one of the parties dwells, unless either of the parties dwells in a district within which there is not any registered building, wherein, under the provisions of the said Act of his late Majesty, as explained and amended by the said Act of her present Majesty, marriage is solemnized according to the form, rite, or ceremony, the parties see fit to adopt : it is therefore declared and enacted, that it is not and shall not be lawful for any superintendent registrar to give any certificate of notice of marriage where the building in which the marriage is to be solemnized, as stated in the notice, shall not be within the district wherein one of the parties shall have dwelt for the time required by the said Act of his late Majesty, except as hereinafter is enacted (d).

Sect. 2. That it shall be lawful for any party intending marriage under the provisions of the said Act of his late Majesty, in addition to the notice required to be given by that Act, to declare at the time of giving such notice, by indorsement thereon, the religious appellation of the body of Christians to which the party professeth to belong, and the form, rite, or ceremony which the parties desire to adopt in solemnizing their marriage, and that, to the best of his or her knowledge and belief, there is not within the district in which one of the parties dwells, any registered building in which marriage is solemnized according to such form, rite, or ceremony, and the district nearest to the residence of that party in which a building is registered wherein marriage is so solemnized, and the registered building within such district in which it is intended to solemnize their marriage ; and after the expiration of seven days or twenty-one days, as the case may require, under the said Act of his late Majesty, it shall be lawful for the superintendent registrar to whom any such notice shall have been given to issue his certificate, according to

(a) See the 6 & 7 Will. 4, c. 85,
s. 1, *ante*, 858.

(b) See sect. 2, *ante*, 840.

(c) See sect. 34, *ante*, 873.

(d) See the 19 & 20 Vict. c. 119,
ss. 13 and 14, *post*, 879.

the provisions of that Act; and after the issuing of such certificate the parties shall be at liberty to solemnize their marriage in the registered building stated in such notice: Provided always, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the truth of the facts herein authorized to be stated in the notice, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage (a).

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Sect. 3. That the additional notice hereinbefore authorized to be given may be according to the form in the schedule to this Act annexed, or to a like effect.

Form of notice.

Sect. 4. That every person who shall knowingly and wilfully make any false declaration under the provisions of this Act, for the purpose of procuring any marriage out of the district in which the parties or one of them dwell, shall suffer the penalties of perjury: Provided always, that no such prosecution shall take place after the expiration of eighteen calendar months from the solemnization of such marriage.

Persons making false declarations guilty of perjury.

Sect. 5. Provided always, and be it enacted, that, notwithstanding anything herein or in the said recited Acts or either of them contained, the Society of Friends, commonly called Quakers, and also persons professing the Jewish religion, may lawfully continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively, after notice for that purpose duly given, and certificate or certificates duly issued, pursuant to the provision of the said recited Act of his late Majesty, notwithstanding the building or place wherein such marriage may be contracted or solemnized be not situate within the district or either of the districts (as the case may be) in which the parties shall respectively dwell. [See the schedule, *post*, 883.]

Provision as to marriages of members of the Society of Friends, and Jews.

By the 19 & 20 Vict. c. 119, entitled "An Act to amend the Provisions of the Marriage and Registration Acts" [29th July, 1856], it is enacted as follows:—

Sect. 1. In case of any party intending marriage under the provisions of any of the said recited Acts or of this Act, no notice of such intended marriage shall be read or published before the guardians of any poor law union or parish or place, or be transmitted by any superintendent registrar to the clerk of any such guardians.

No notice of marriage to be read or published before poor law guardians, or be transmitted to the clerk of such guardians.

Sect. 2. In case any party shall intend marriage, under the provisions of any of the said recited Acts or of this Act, the party so intending marriage shall, at the time of giving to the superintendent registrar or respective superintendent registrars, as the case may be, the notice required by the said recited Acts or either of them, make and sign or subscribe a solemn declaration in writing, in the body or at the foot of such notice, that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that the parties to the said marriage, in case the marriage is intended to be had without licence, have, for the space of seven days immediately preceding the giving of such notice, had their usual place of abode and residence within the district of the superintendent registrar or respective superintendent registrars to whom such notice or notices, as the case may be, shall be so given; or, in case such marriage is intended to be had by licence, that one of the said parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the superintendent registrar to whom

Every notice of marriage to be accompanied by a solemn declaration, by one of the parties, that there is no lawful hindrance to such marriage, etc.

(a) See the 19 & 20 Vict. c. 119, ss. 13 and 14, *post*, 879.

*2. Of Mar-
riages solemn-
ized under a
Registrar's
Certificate,
etc.*

Persons making
wilfully false
declarations to
suffer the penal-
ties of perjury.

Form of notice
of marriage.

Notice of mar-
riage without
licence to be
affixed in super-
intendent regis-
trar's office.

such notice shall be so given; and when either of the parties intending marriage, and not being a widower or widow, shall be under the age of twenty-one years, the party making such declaration shall further declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required; and every declaration so made as aforesaid shall be signed and subscribed, by the party making the same, in the presence of the superintendent registrar to whom the notice of marriage containing such declaration is given, or in the presence of his deputy, or of some registrar of births and deaths or of marriages for the district in which the party giving such notice resides, or of the deputy of such registrar, who shall respectively attest the same by adding thereto his name, description, and place of abode; and no certificate or licence for marriage shall be issued or granted pursuant to any such notice as aforesaid unless the said notice be accompanied by such solemn declaration duly made and signed or subscribed and attested as aforesaid; and every person who shall knowingly or wilfully make and sign or subscribe any false declaration, or who shall sign any false notice for the purpose of procuring any marriage under the provisions of any of the said recited Acts or this Act, shall suffer the penalties of perjury.

Sect. 3. Every notice of marriage which shall be given under the provisions of any of the said recited Acts or of this Act, after this Act shall have come into operation, shall be in the form of Schedule (A.) to this Act annexed, or to the like effect; and in every case where the marriage is intended to be had and solemnized under the provisions of the said recited Act of the third and fourth years of her Majesty, chapter seventy-two, such notice shall, in addition to the several particulars comprised in the said schedule, contain the declaration required to be made by one of the parties to such intended marriage, pursuant to the second section of the said last-mentioned Act, and the superintendent registrar to whom any such notice of marriage shall be so given shall forthwith enter the particulars, and the date thereof, and the name of the party giving the same into the "Marriage Notice Book;" and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling.

Sect. 4. In case any party shall intend marriage without licence under the provisions of any of the said recited Acts or of this Act, the superintendent registrar to whom notice of such intended marriage has been given shall cause the notice of marriage, or a true and exact copy thereof, as entered in the "Marriage Notice Book," under the hand of such superintendent registrar, to be suspended or affixed in some conspicuous place in the office of the said superintendent registrar during twenty-one successive days next after the day of the entry of such notice in his "Marriage Notice Book," before any marriage shall be solemnized in pursuance of such notice, and after the expiration of twenty-one days next after the day of the entry of such notice in his "Marriage Notice Book" the superintendent registrar shall issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in schedule (B.) to this Act annexed, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same superintendent registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited Acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have and

receive a fee of one shilling; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said certificate; and every superintendent registrar's certificate for marriage duly issued under the provisions of this Act shall have the same force, validity, and effect as the like certificate issued under the provisions of the said recited Acts or either of them would have had in case this Act had not been passed.

2. Of Marriages solemnized under a Registrar's Certificate, etc.

Sect. 5. In case any party shall intend marriage by licence under the provisions of any of the said recited Acts or of this Act, notice of such intended marriage shall not be suspended in the office of the superintendent registrar, but the party giving the same shall state therein that such marriage is intended to be celebrated by licence.

Notice of marriage by licence not to be suspended in the office of the superintendent registrar.

Sect. 6. In any case of marriage intended to be solemnized by licence, under the provisions of either of the said two firstly recited Acts or of this Act, between parties both of whom do not dwell in the same superintendent registrar's district, it shall not be required that notice of such intended marriage shall be given to more than one superintendent registrar, but a notice to the superintendent registrar of the district in which one of the parties so intending marriage resides shall be sufficient; and it shall not be required that the said notice shall state how long each of the said parties has resided in his or her dwelling-place, but only how long the party residing in the district in which the notice is given has so resided.

In case of marriage by licence, notice to be given to the superintendent registrar of one district shall be sufficient.

Sect. 7. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited Acts or of this Act, shall dwell in Ireland, the party so dwelling in Ireland shall give notice in the form there used in that behalf or to the like effect to the registrar of the district in Ireland within which such party shall have dwelt for not less than seven days then next preceding, and shall state therein the name and surname and the profession and condition and age of each of the parties intending marriage, and also the dwelling-place of each of them, and the time, not being less than seven days, during which he or she shall have dwelt therein, and also the church or other building in which the marriage is to be solemnized, provided that if either party shall have dwelt in the place stated in the notice as his or her dwelling-place more than one month it may be stated that he or she hath dwelt therein one month and upwards; and such notice shall be dealt with in the manner and such certificate for marriage shall be given by such registrar in the mode respectively prescribed in the 7 & 8 Vict. c. 81, as amended by the 9 & 10 Vict. c. 72, provided that in such case the certificate for marriage shall not be issued before the expiration of twenty-one days next after the day of the entry of such notice, as in the first of the said two last-mentioned Acts is provided; and from and after the issuing of such certificate the production of the same to any person duly authorized under the provisions of this Act to solemnize a marriage shall be as valid and effectual for authorizing such person to solemnize such marriage as the production of a certificate for marriage of a superintendent registrar of a district in England would be under any or either of the said three firstly hereinbefore recited Acts, if the party giving such notice were resident within such district, and the other party to such intended marriage were also resident within another superintendent registrar's district in England; and where marriages have since the passing of the said Act for marriages in Ireland, and for registering such marriages, been solemnized in England between parties, one of whom was resident in Ireland, under certificates, of which one was the certificate of the registrar of the district in Ireland within which one of the parties had dwelt for not less than seven days, and the other the certificate of the superintendent registrar of the district in England within

Notice of marriage without licence may be given in Ireland, if one of the parties reside there.

2. Of Marriages solemnized under a Registrar's Certificate. etc.

Certificate of proclamation of banns in Scotland as to party resident there equivalent to superintendent registrar's certificate.

In cases of marriage by licence, certificate of the notice thereof may be given by the superintendent registrar (unless the marriage be forbidden), and thereupon the marriage may be solemnized.

Form of licence for marriage.

Mode of solemnizing marriages in registered buildings.

which the other party had dwelt for not less than seven days, such marriages are hereby declared to be and to have been valid in the same manner as if the parties had been respectively resident for not less than seven days in the respective districts of two superintendent registrars in England, and like certificates had been issued by both such superintendent registrars.

Sect. 8. In every case in which one of the parties intending marriage without licence, under the provisions of any of the said recited Acts or this Act, shall dwell in Scotland, a certificate of proclamation of banns in Scotland under the hand of the session clerk of the parish in which such proclamation shall have been made shall, when produced to any person duly authorized under the provisions of this Act to solemnize a marriage, be as valid and effectual for authorizing such person to solemnize such marriage as the production of a certificate for marriage of a superintendent registrar of a district in England would be, under any or either of the said three firstly-recited Acts, in reference to a party resident within such district.

Sect. 9. Every superintendent registrar receiving notice of an intended marriage to be solemnized by licence as aforesaid shall, after the expiration of one whole day next after the day of the entry of such notice in his "Marriage Notice Book," issue under his hand, upon the request of the party giving such notice, a certificate in the form or to the effect of the certificate set forth in the said schedule (B.) to this Act annexed, and also a licence to marry, provided that in the meantime no lawful impediment to the issuing of such certificate be shown to the satisfaction of the same superintendent registrar, and provided the issue of such certificate shall not have been forbidden in the manner provided by either of the said firstly and secondly recited Acts by some person or persons authorized in that behalf; and every such certificate shall state the particulars set forth in the said notice, and the day on which the same notice was entered, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have and receive a fee of one shilling; and at any time within three calendar months next after the day of the entry of such notice the intended marriage may be solemnized under the authority of the said licence; and every superintendent registrar's certificate and licence for marriage duly issued under the provisions of this Act shall have the same force, validity, and effect as the like certificate and licence issued under the provisions of the said recited Acts or either of them would have had in case this Act had not been passed.

Sect. 10. The form of a licence for marriage so to be granted as aforesaid to any party or parties, by the superintendent registrar of any district as aforesaid, shall be in the form or to the effect of the licence set forth in schedule (C.) to this Act annexed; and for every such licence the superintendent registrar granting the same shall be entitled to have and receive of the party requiring the same the sum of one pound ten shillings, over and above the amount paid for the stamps necessary on granting such licence.

Sect. 11. No such marriage as aforesaid shall be solemnized in any such registered building without the consent of the minister or of one of the trustees, owners, deacons, or managers thereof, nor in any registered building of the church of Rome without the consent of the officiating minister thereof, nor in any church or chapel of the united church of England and Ireland without the consent of the minister thereof, nor in such latter case by any other than a duly qualified clergyman of the said united church, or with any other forms or ceremonies than those of the said united church, any statute or statutes to the contrary notwithstanding.

Sect. 12. If the parties to any marriage contracted at the registry office of any district conformably to the said recited Acts or any of them, or to the provisions of this Act, shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention so to do; and such clergyman or minister, upon the production of their certificate of marriage before the superintendent registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong: Provided always, that no minister of religion who is not in holy orders of the united church of England and Ireland shall under the provisions of this Act officiate in any church or chapel of the united church of England and Ireland; but nothing in the reading or celebration of such service shall be held to supersede or invalidate any marriage so previously contracted, nor shall such reading or celebration be entered as a marriage among the marriages in the parish register: Provided also, that at no marriage solemnized at the registry office of any district shall any religious service be used at such registry office.

Sect. 13. When any marriage is intended to be solemnized between parties not of the Society of Friends commonly called Quakers, or not professing the Jewish religion, by licence under the provisions of the before-recited Act of the third and fourth years of her Majesty, chapter seventy-two, in a registered building situated in a district within which neither of the parties resides, it shall be lawful for the superintendent registrar to whom notice of such intended marriage shall have been given to grant to the party applying for the same a licence for such marriage to be solemnized in the registered building stated in such notice; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual to all intents and purposes as if the same had been granted by the superintendent registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated.

Sect. 14. When any marriage is intended to be solemnized, under the provisions of any of the before-recited Acts or of this Act, in the usual place of worship of the parties so intending marriage, or one of them, and such place of worship shall be a registered building situated out of the district of their, his, or her residence, it shall be lawful for the superintendent registrar or respective superintendent registrars to whom notice of such marriage shall have been given to grant to the party applying for the same a licence or certificate, as the case may be, for such marriage to be solemnized in the registered building stated in such notice, provided such building be situated not more than two miles beyond the limits of the district in which the notice of such marriage has been given, and the party giving notice of such marriage shall at the time of giving the same state therein, in addition to the description of the building in which the marriage is to be solemnized, that it is the usual place of worship of one of the parties, and shall also state the name of the party whose usual place of worship it is; and every licence and certificate granted in pursuance of this enactment shall be as valid and effectual, to all intents and purposes, as if the same had been granted by the superintendent registrar of the district in which the registered building wherein the marriage is intended to be solemnized is situated.

Sect. 15. The registrar-general shall have power and he is hereby authorized from time to time to appoint, by writing under his hand, such

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Persons desirous may add the religious ceremony ordained by their church or persuasion.

Superintendent registrar to whom notice is given may grant licence for marriage (under 3 & 4 Vict. c. 72) in a district in which neither of the parties resides.

Superintendent registrar may grant licence for marriage to be solemnized in registered building out of the district wherein the parties reside.

Registrar-general may appoint registrars of

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

marriages; and appointment of registrars of marriages by superintendent registrars to be subject to the approval of the registrar-general.

Registrar of marriages may appoint a deputy.

person or persons as he may think fit, with such qualifications as the said registrar-general by any general rule shall have declared to be necessary, to be a registrar or registrars of marriages within the district of any superintendent registrar; and every appointment to be hereafter made by any superintendent registrar of any person or persons to be a registrar or registrars, for the purpose of being present at marriages to be solemnized under and by virtue of any or either of the said recited Acts or of this Act, shall be by writing under the hand of such superintendent registrar, and shall be subject to the approval of the registrar-general.

Sect. 16. Every registrar of marriages, already appointed or hereafter to be appointed, shall be and he is hereby empowered, subject to the approval of the registrar-general, to appoint, by a writing under his hand, a fit person to be and to act as his deputy, in case of the illness or unavoidable absence of such registrar; and every such deputy, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties in the said recited Acts or any or either of them given, imposed, and contained concerning registrars of marriages; and every such deputy shall hold his office during the pleasure of the registrar by whom he was appointed, but shall be removable by the registrar-general; and every registrar of marriages shall be civilly responsible for the acts and omissions of his deputy; and in case any registrar of marriages shall die, or otherwise cease to hold his office, his deputy shall become the registrar of marriages in his place until the appointment of another registrar of marriages shall have been made, and notified to him by the superintendent registrar or by the registrar-general, and shall, while continuing such registrar, have the same powers and duties and be subject to the same provisions and penalties as any other registrar of marriages.

Proof of the observance of this Act and of the recited Acts, matters not necessary to the validity of marriages.

Sect. 17. After any marriage shall have been solemnized under the authority of any of the said recited Acts or of this Act, it shall not be necessary in support of such marriage to give any proof of the actual dwelling or of the period of dwelling of either of the parties previous to the marriage within the district stated in any notice of marriage to be that of his or her residence, or of the consent to any marriage having been given by any person whose consent thereto is required by law, or that the registered building in which any marriage may have been solemnized had been certified according to law as a place of religious worship, or that such building was the usual place of worship of either of the parties, nor shall any evidence be given to prove the contrary in any suit or legal proceedings touching the validity of such marriage; and all marriages which heretofore have been or which hereafter may be had or solemnized under the authority of any of the said recited Acts or of this Act, in any building or place of worship which has been registered pursuant to the provisions of the said Act passed in the sixth and seventh years of his late Majesty king William the Fourth, chapter eighty-five, but which may not have been certified as required by law, shall be as valid in all respects as if such place of worship had been so certified.

Penalty on making false declaration or giving false notices.

Sect. 18. Any person who shall knowingly or wilfully make any false declaration or sign any false notice required by this Act for the purpose of procuring any marriage, and every person who shall forbid the granting by any superintendent registrar of a certificate for marriage by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury.

In case of fraudulent marriages, the guilty party to forfeit.

Sect. 19. If any valid marriage shall be had, under the provisions of any of the said recited Acts or this Act, by means of any wilfully false declaration, notice, or certificate made or obtained by either party to such

marriage as to any matter in which a solemn declaration, notice, or certificate is required, it shall be lawful for her Majesty's attorney-general or solicitor-general to sue for a forfeiture of all the estate and interest in any property accruing to the offending party by such marriage, and the proceedings thereupon and the consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized by licence between parties under age according to the rites of the church of England in the statute passed in the fourth year of the reign of his late Majesty king George the Fourth, chapter seventy-six.

Sect. 20. Except where the provisions of the said recited Acts are expressly altered by or are at variance with the provisions of this Act, nothing herein contained shall alter, repeal, or affect, or be construed so as in any manner to alter, repeal, or affect, any of the several provisions and clauses contained in the same Acts or any of them, but, except as aforesaid, the same provisions and clauses respectively shall be and remain in full force and effect as if this Act had not been passed; and this Act shall, except as aforesaid, be considered as incorporated with the same provisions and clauses, and be construed in connection therewith; provided that, save as hereinafter mentioned, none of the provisions of this Act shall limit or alter, or be construed to limit or alter, the privileges of persons belonging to the Society of Friends commonly called Quakers, or of persons professing the Jewish religion, or impose on either of such bodies any obligations beyond such as are enacted in either of the said recited Acts.

Sect. 21. Any marriage according to the usages of the Society of Friends commonly called Quakers, or to the usages of persons professing the Jewish religion respectively, where the parties thereto are both members of the said society or both persons professing the Jewish religion respectively, may be solemnized by licence (which licence the superintendent registrar to whom notice of the intended marriage shall have been given is hereby authorized to grant, in the form or to the effect set forth in the said schedule (C.) to this Act annexed) as effectually in all respects as if such marriage were solemnized after the issue of a certificate by such superintendent registrar in the manner provided by the said recited Acts or any of them; and the provisions in this present Act contained in relation to the solemn declaration to be made by the party intending marriage, and to the statement to be contained in the notice of such intended marriage that such marriage is intended to be celebrated by licence, and to the notice to be given of any such intended marriage by licence, and to the giving of certificates in the form or to the effect set forth in schedule (B.) to this Act annexed, and to the fee and stamp to be paid for such licence, shall be applicable in all respects to every such marriage to be solemnized by licence according to the usages of the said society or to the usages of persons professing the Jewish religion respectively.

Sect. 22. The registrar-general shall furnish or cause to be furnished to the person whom twenty householders professing the Jewish religion; and being members of the West London Synagogue of British Jews, shall certify in writing under their hands to the registrar-general to be the secretary of the West London Synagogue of British Jews, and also to every person whom such secretary shall in like manner certify to be the secretary of some other synagogue of not less than twenty householders professing the Jewish religion, and being in connection with the West London Synagogue, and having been established for not less than one year, a sufficient number in duplicate of marriage register books and forms for certified copies thereof; and every secretary of a synagogue to whom such books and forms shall be furnished under this Act shall perform the same duties in relation to the registration of marriages between persons professing the Jewish religion as under an Act passed in the

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

all property accruing from the marriage, as in 4 Geo. 4, c. 76.

Nothing to alter, etc., provisions of existing Acts, except where at variance with this Act.

Marriages of Quakers or Jews may be solemnized by licence.

Registrar-general to furnish marriage register books and forms to each certified secretary of a synagogue of British Jews.

2. *Of Marriages solemnized under a Registrar's Certificate, etc.*

Marriages under this Act good and cognizable.

Recites the Act of 15 & 16 Vict. c. 36.

Registrar-general to allow searches to be made, and give extracts from the returns of certified places of worship made to him thereto, on payment of specified fees.

Act not to extend to Ireland or Scotland.

Commencement of Act.

session of Parliament held in the sixth and seventh years of his late Majesty king William the fourth, chapter eighty-six, intituled, "An Act for registering Births, Deaths, and Marriages in England," are to be performed by the secretary of a synagogue to whom marriage register books and forms for certified copies thereof have been or shall be furnished under that Act.

Sect. 23. Every marriage solemnized under any of the said recited Acts or of this Act shall be good and cognizable in like manner as marriages before the passing of the first-recited Act according to the rites of the church of England.

Sect. 24. And whereas, in pursuance of the 15 & 16 Vict. c. 36, the registrars of the several dioceses and archdeaconries, and the clerks of the peace of the several counties, ridings, divisions, cities, and boroughs in England and Wales, did, in the year one thousand eight hundred and fifty-two, make and transmit, as thereby required, to the registrar-general of births, deaths, and marriages in England, duly verified returns of all places within the limits of their respective jurisdictions which previous to and up to the time of the passing of the last-mentioned Act had been certified according to law and registered or recorded as places of meeting for religious worship: and whereas the total number of such places of meeting so returned to the said registrar-general pursuant to the provisions of the said Act is fifty-four thousand eight hundred and four, and it is expedient that, for facilitating the proof of such places having been duly certified and registered or recorded as aforesaid, the registrar-general should be empowered by law to allow searches to be made in the said returns, and to give certified copies thereof and extracts therefrom: Be it further enacted as follows:

The registrar-general, on payment to him of the several fees herein-after mentioned, shall allow searches to be made in the returns so made to him as aforesaid, and shall give to any person demanding the same a certified copy thereof or extract therefrom with respect to any place of meeting for religious worship contained therein; and every such certified copy or extract shall be sealed or stamped with the seal of the general register office, and when so sealed or stamped as aforesaid, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal court, shall be received as evidence of the place of meeting therein mentioned or described having been at the time in that behalf therein stated duly certified and registered or recorded as by law required, without any further or other proof of the same; and the registrar-general shall be entitled to demand and receive for every such search in the said returns extending over a period of not more than ten years the sum of one shilling, and for every additional period of ten years the sum of sixpence, and the further sum of two shillings and sixpence for every single certified copy or extract.

Sect. 25. Save as herein expressly provided, this Act shall not extend to Ireland or Scotland.

Sect. 26. This Act shall come into operation on the 1st of January, 1857, and none of the provisions thereof shall take effect previous to that day.

SCHEDULES TO WHICH THE 6 & 7 WILL. 4, c. 85 REFERS.

Schedules A., B., and C. are superseded by those given in the 19 & 20 Vict. c. 119, *post*, 883.

SCHEDULE (D.).

I, *John Cox*, registrar of the district of *Stepney*, in the county of *Middlesex*, do hereby certify that this is a true copy of the entries of marriage registered in the said district from the entry of the marriage of *John Wood* and *Ann Simpson*, number one, to the entry of the marriage of *James Smith* and *Martha Green*, number fourteen. Witness my hand this first day of July, 1837.

(Signed) *John Cox*, Registrar.

[The *Italics* in this schedule to be filled up as the case may be.]

2. Of Marriages solemnized under a Registrar's Certificate, etc.

Schedules.
Schedule (D.).

THE SCHEDULE TO WHICH THE 3 & 4 VICT. c. 72,
REFERS.

I, the undersigned and within-named *James Smith*, do hereby declare that I, being [here insert, a member of the Church of England, a Roman Catholic, Independent, Baptist, Presbyterian, Unitarian, or such other description of the religion of the party], and the within-named *Martha Green*, in solemnizing our intended marriage, desire to adopt the form, rite, or ceremony of the [Roman Catholic Church, Independents, Baptists, Presbyterians, Unitarians, or other description of the form, rite, or ceremony the parties state it to be their desire to adopt]; and that to the best of my knowledge and belief there is not within the superintendent registrar's district in which [I dwell], or [in which the said *Martha Green* dwells], any registered building in which marriage is solemnized according to such form, rite, or ceremony; and that the nearest district to [my dwelling-place], or to [the dwelling-place of the said *Martha Green*], in which a building is registered wherein marriage may be solemnized according to such form, rite, or ceremony, is the [here insert the name by which the superintendent registrar's district is designated]; and that we intend to solemnize our marriage in the registered building within that district known by the name of [here insert the name by which the building has been registered]. Witness my hand this tenth day of August, one thousand eight hundred and forty.

(Signed) *James Smith*.

[The *Italics* in this schedule to be filled up as the case may be.]

THE SCHEDULES TO WHICH THE 19 & 20 VICT. c. 119,
REFERS.

SCHEDULE (A.).

Form of Notice of Marriage.

To the Superintendent Registrar of the District of *Hendon*, in the County of *Middlesex*.

I, the undersigned *James Smith*, hereby give you notice, that a marriage is intended to be had without [or by, as the case may be], licence within three calendar months from the date hereof, between me and the other party herein named and described; (that is to say),

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
James Smith.	Widower.	Ironmonger.	Twenty-five Years.	16, High Street, Hendon, Middlesex.	Seven or Fifteen Days, as the case may be.	Sion Chapel, West Street, Tunbridge, Kent.	Hendon, Middlesex.
Martha Green.	Spinster.		Nineteen Years.	Grove Farm, Tunbridge, Kent.	More than a Month.		Tunbridge, Kent.

2. Of Marriages solemnized under a Registrar's Certificate, etc.

Schedules.

And I hereby solemnly declare, that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that I, the above-named James Smith, have for the space of fifteen days immediately preceding the giving of this notice had my usual place of abode and residence.

[If the marriage is intended to be had in a church or chapel of the Church of England, insert in this space the following words, "*in the parish of*," or "*in the ecclesiastical district of*," (as the case may be), and add the name of the parish or ecclesiastical district in which one of the parties resides] *within the above-mentioned district of Hendon.*

[*And I further declare, that I am not a minor under the age of twenty-one years, and that the other party herein named and described is not a minor under the age of twenty-one years. (If one or both of the parties be under age these words must be expunged.)*]

SCHEDULE (B).

Form of Superintendent Registrar's Certificate.

I, John Cox, Superintendent Registrar of the district of Hendon, in the county of Middlesex, do hereby certify, that on the fifth day of January, 1857, notice was duly entered in the Marriage Notice Book of the said district of the marriage intended between the parties herein-after named and described, and of such marriage being intended to be solemnized without [or by, as the case may be,] licence, delivered under the hand of James Smith, one of the parties; (that is to say,)

Name and Surname.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which the Marriage is to be solemnized.	District and County in which the Parties respectively dwell.
James Smith.	Widower.	Ironmonger.	Twenty-five Years.	16, High Street, Hendon, Middlesex.	Fifteen Days.	Sion Chapel, West Street, Tunbridge, Kent.	Hendon, Middlesex.
Martha Green.	Spinster.		Nineteen Years.	Grove Farm, Tunbridge, Kent.	More than a Month.		Tunbridge, Kent.

Date of entry of notice,
5th January, 1857.

Date of certificate given,
27th January, 1857.

The issue of this certificate has not been forbidden by any person authorized to forbid the issue thereof.

Witness my hand, this twenty-seventh day of January, 1857.

(Signed) John Cox,
Superintendent Registrar.

This certificate will be void unless the marriage is solemnized within three calendar months after the date of the entry of notice, namely, on or before the fifth day of April, 1857.

SCHEDULE (C.).

1. *Physicians, Surgeons, and Apothecaries.*

Form of Superintendent Registrar's Licence for Marriage.

To A. B. of _____ in the county of _____ and C. D. of _____
in the county of _____ I, the undersigned
superintendent registrar of the district of _____ in the county of _____
send greeting :

Whereas in pursuance of some or one of the statutes next hereinafter mentioned made and now in force concerning the contracting and solemnizing of marriages in England; (that is to say,) an Act passed in the seventh year of his late Majesty King William the Fourth, chapter 85; an Act passed in the first year of her present Majesty, chapter 22; an Act passed in the fourth year of her said Majesty, chapter 72; and an Act passed in the _____ year of her said Majesty, chapter _____; one of you did on the _____ day of _____ give due notice of your intention to enter into a contract of marriage, and you were desirous that such marriage should be speedily performed at _____ in the district of _____; and whereas it has been made to appear to my satisfaction that in regard to your said intended marriage you have severally in all respects complied with the provisions and requirements of the above-mentioned statutes, so far as such provisions and requirements are applicable to and binding upon you or either of you: And whereas no impediment of kindred or alliance or other lawful hindrance to the said marriage has been shown to exist: And whereas the certificate required by law has been duly issued by me: Now therefore I, the said superintendent registrar, by virtue of the power and authority vested in me in that behalf, do hereby grant unto you the aforesaid A. B. and C. D. full licence and permission to proceed in due form of law to contract and solemnize such marriage at _____ in the said district at any time within but not after the expiration of three calendar months next following the _____ day of _____

Witness my hand this *day of*

E. F.,
Superintendent Registrar of the
above-mentioned district.

Medical Practitioners.

Herein of

- I. *Physicians, Surgeons, and Apothecaries*, p. 885.
II. *Chemists and Druggists*, p. 892.

I. Physicians, Surgeons, and Apothecaries.

By the 21 & 22 Vict. c. 90 (August 2nd, 1858), for regulating the qualifications of practitioners in medicine and surgery, a council, styled the General Council of Medical Education and Registration of the United Kingdom, is formed, with power to appoint registrars and other officers.

By sect. 14, *et seq.*, it is the duty of the registrar to keep a register of all medical practitioners then or thereafter becoming qualified.

By sect. 24, all powers vested in the privy council by this Act may be exercised by any three or more of the lords and others of the privy council, the vice-president of the committee of the said privy council

1. *Physicians, Surgeons, and Apothecaries.*

on education being one of them, and all orders and acts of the privy council under this Act shall be sufficiently made and signified by a written or printed document signed by one of the clerks of the privy council or such officer as may be appointed by the privy council in this behalf, and all orders and acts made or signified by any written or printed document purporting to be so signed, shall be deemed to have been duly made, issued, and done by the privy council, and every such document shall be received in evidence in all Courts and before all justices and others, without proof of the authority or signature of such clerk or other officer or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the privy council.

By sect. 27 the registrar is to publish every year a register of all names appearing on the general register to be called the Medical Register. And a copy of the medical register for the time being, purporting to be so printed and published as aforesaid, shall be evidence in all Courts and before all justices of the peace and others, that the persons therein specified are registered according to the provisions of this Act, and the absence of the name of any person from such copy shall be evidence until the contrary be made to appear that such person is not registered according to the provisions of this Act: Provided always, that in the case of any person whose name does not appear in such copy a certified copy under the hand of the registrar of the general council or of any branch council, of the entry of the name of such person on the general or local register, shall be evidence that such person is registered under the provisions of this Act.

A book purporting to be a copy of the medical register and professing to be published and sold at the office of the general council of medical education, and registration is admissible under this section. (*Pedgrift v. Chevallier*, 8 C. B., N. S. 246.)

Sect. 29. If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due inquiry be judged by the general council to have been guilty of infamous conduct in any professional respect, the general council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register.

Sect. 35. Every person who shall be registered under the provisions of this Act shall be exempt, if he shall so desire, from serving on all juries and inquests whatsoever, and from serving all corporate, parochial, ward, hundred, and township offices, and from serving in the militia, and the name of such person shall not be returned in any list of persons liable to serve in the militia, or in any such office as aforesaid.

Sect. 36. After the first day of January, 1859 (*a*), no person shall hold any appointment as a physician, surgeon, or other medical officer, either in the military or naval service, or in emigrant or other vessels, or in any hospital, infirmary, dispensary, or lying-in-hospital, not supported wholly by voluntary contributions, or in any lunatic asylum, gaol, penitentiary, house of correction, house of industry, parochial or union workhouse or poorhouse, parish union, or other public establishment, body, or institution, or to any friendly or other society for affording mutual relief in sickness, infirmity, or old age, or as a medical officer of health, unless he be registered under this Act (*b*): Provided always, that nothing in this Act contained shall extend to repeal or alter any of the provisions of the "Passengers Act" of 1855 (*c*).

(*a*) 1861. See the 23 Vict. c. 7, *post*, 888.
s. 3, *post*, 888.

(*b*) See also the 23 Vict. c. 7, s. 4, Act, Vol. V., tit. "Shipping."

(*c*) 18 & 19 Vict. c. 119. See the

Sect. 37. After the first day of January, 1859 (*a*), no certificate required by any Act now in force, or that may hereafter be passed from any physician, surgeon, licentiate in medicine and surgery, or other medical practitioner, shall be valid unless the person signing the same be registered under this Act.

Sect. 38. Any registrar who shall wilfully make or cause to be made any falsification in any matters relating to the register shall be deemed guilty of a misdemeanour in England or Ireland, and in Scotland of a crime or offence punishable by fine or imprisonment, and shall, on conviction thereof, be imprisoned for any term not exceeding twelve months.

Sect. 39. If any person shall wilfully procure or attempt to procure himself to be registered under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration either verbally or in writing, every such person so offending, and every person aiding and assisting him therein, shall be deemed guilty of a misdemeanour in England and Ireland, and in Scotland of a crime or offence punishable by fine or imprisonment, and shall, on conviction thereof, be sentenced to be imprisoned for any term not exceeding twelve months.

Sect. 40. Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary, or any name, title, addition, or description implying that he is registered under this Act, or that he is recognized by law as a physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary, shall, upon a summary conviction for any such offence, pay a sum not exceeding twenty pounds.

The mere fact of the wrongful assumption of the title, if done under a supposed right, is not within the section. Thus, where a duly registered surgeon prefixed the title "Dr." to his name on his door, and upon being summoned under this section, produced a document purporting to be a grant of a diploma from a German university, it was held that the justices rightly dismissed the information. (*Ellis v. Kelly*, 30 *L. J.*, *M. C.* 35; 6 *H. & N.* 222.)

The wilful and false assumption of the title of doctor of medicine by a surgeon duly registered as a surgeon is an offence within the Act. (*Ib.*)

Where upon an information under this section it was proved that the defendant, who was not on the register, occupied a house jointly with B., a duly qualified medical practitioner; that on the door there was a plate with the defendant's name on it, and underneath, on another plate enclosed in the same frame, the name of B., with the addition of the words, "surgeon, accoucheur," etc.; and that on a lamp over the door there were the words "surgeon, accoucheur," and on another door the word "surgery," the Court held that there was no evidence of any offence within this section and quashed the conviction. (*Pedgrift v. Chevallier*, 8 *C. B.*, *N. S.* 246; 29 *L. J.*, *M. C.* 225.)

The mere fact that a person is called a surgeon by those whom he has attended professionally, is not, in the absence of evidence that he has done so on his own account, and for his own profit, sufficient to warrant a conviction. (*Ib.*)

Sect. 41. Any penalty to which, under this Act, any person is liable on summary conviction of any offence may be recovered as follows (that is to say), in England in manner directed by the Act of the session holden in the eleventh and twelfth years of her Majesty, chap. 43, and in Ireland in manner directed by the "Petty Sessions (Ireland) Act, 1851," or any other Act for the time being in force in England and Ire-

1. *Physicians, Surgeons, and Apothecaries.*

(a) 1861. See the 23 *Vict. c. 7*, s. 3, *post*, 888.

1. *Physicians, Surgeons, and Apothecaries.*

land respectively for the like purposes, and any such penalty may in Scotland be recovered by the procurator fiscal of the county, or by any other person before the sheriff or two justices, who may proceed in a summary way, and grant warrant for bringing the party complained against before him or them, or issue an order requiring such party to appear on a day and at a time and place to be named in such order, and every such order shall be served on the party by delivering to him in person, or by leaving at his usual place of abode a copy of such order and of the complaint whereupon the same has proceeded, and upon the appearance or default to appear of the party, it shall be lawful for the sheriff or justices to proceed to the hearing of the complaint, and upon proof on oath or confession of the offence, the sheriff or justices shall, without any written pleadings or record of evidence, commit the offender, and decern him to pay the penalty named as well as such expenses as the sheriff or justices shall think fit, and failing payment shall grant warrant for recovery thereof by poinding and imprisonment, such imprisonment to be for such period as the discretion of the sheriff or justices may direct, not exceeding three calendar months, and to cease on payment of the penalty and expenses.

Sect. 42. Any sum or sums of money arising from conviction and recovery of penalties as aforesaid shall be paid to the treasurer of the general council.

23 Vict. c. 7.

The 21 & 22 Vict. c. 90, is amended by the 22 Vict. c. 21, and also by the 23 Vict. c. 7, which latter Act provides by sect. 3, that the first day of January, 1861, shall be deemed to be substituted in sections 32, 34, 36, and 37 respectively of the said first recited Act, as the same are amended for the said second recited Act for the first day of July, 1859, so far as the same relates to any person authorized to be registered under this Act and the said several sections as so amended, and all the provisions of the said Act having reference thereto shall, with respect to any such person so authorized to be registered under this Act, be construed and take effect as if the words "the first day of January, 1861," had been originally inserted in each of the said sections instead of the words "the first day of July, 1859."

Sect. 4. No person authorized to be registered under this Act who shall be acting as medical officer under an order of the poor law commissioners, or poor law board, shall by reason of the said recited Acts or either of them, be or be deemed to have been disqualified to hold such office, or any appointment mentioned in sect. 36 of the said first recited Act, unless he shall have failed to be registered on or before the first day of January, 1861.

Mala praxis.

The *mala praxis* of a physician has been held a great misdemeanour and offence at common law (whether it be for curiosity and experiment or by neglect), because it breaks the trust which the party has placed in him, and tends directly to its destruction. (*Dr. Groenvelt's case*, 1 *Ld. Raym.* 213.) And as to how far a party killing another by bad medical treatment may be guilty of murder or manslaughter, see "*Homicide*," Vol. II.

Master, wardens, etc., empowered to enter shops of apothecaries, etc., and examine drugs, etc.

By the 55 Geo. 3, c. 194, s. 3, the master, wardens, and society of apothecaries, and their successors, or any of the assistants, or persons properly qualified [viz., sect. 4, for London and thirty miles around, being a member of the society of apothecaries of at least ten years' standing, and all other parts of England and Wales, an apothecary in actual practice for at least ten years], to be by the master and wardens nominated, not being fewer in number than two persons, may at all reasonable times, in the day time, as often as to the said master and wardens it shall seem expedient, enter into any shop of any apothecary in England or Wales, and search, survey, prove, and determine, if the

medicines, simple or compound, wares, drugs, or things whatsoever therein contained, and belonging to the art or mystery of apothecaries, be wholesome, meet, and fit for the cure, health, and ease of his Majesty's subjects; and all such medicines, etc., which they shall find, false, unlawful, deceitful, stale, unwholesome, corrupt, pernicious, or hurtful, shall and may burn, or otherwise destroy; and also shall report to the master, wardens, and assistants of the said society, the name of such person as shall be found to have the same in possession; and the said master, wardens, and assistants, shall and may impose and levy the following fines and penalties upon every person whose names shall be so reported to them as hereinafter mentioned: for the first offence, five pounds; for the second offence, ten pounds; and for the third and every other offence, twenty pounds.

1. *Physicians, Surgeons, and Apothecaries.*

Penalties.

Sect. 5. And whereas it is the duty (a) of every person, using or exercising the art and mystery of an *apothecary*, to prepare with exactness, and to dispense such medicines as may be directed for the sick by any physician lawfully licensed to practise physic by the president and commonalty of the faculty of physic in London, or by either of the two universities of Oxford or Cambridge; therefore, for the further protection, security, and benefit of his Majesty's subjects, and for the better regulation of the practice of physic throughout England and Wales, be it enacted, that if any person using or exercising the art and mystery of an apothecary, shall at any time knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on sale, put forth, or put to sale, to any person or persons whatever, any medicines, compound medicines, or medicinable compositions, or shall deliberately or negligently, falsely, unfaithfully, fraudulently or unduly make, mix, compound, prepare, give, apply, or administer, or any way sell, set on sale, put forth, or put to sale to any person or persons whatever, any medicines, compound medicines, or medicinable compositions, as directed by any prescription, order, or receipt, signed with the initials, in his own handwriting, of any physician so lawfully licensed to practise physic, such person or persons so offending shall, upon complaint made within twenty-one days by such physician, and upon conviction of such offence before any of his Majesty's justices of the peace, unless such offender can show some satisfactory reason, excuse, or justification in this behalf, forfeit for the first offence the sum of five pounds; for the second offence the sum of ten pounds; and for the third offence he shall forfeit his certificate, and be rendered incapable in future of using or exercising the art and mystery of an apothecary, and be liable to the penalty inflicted by this Act upon all who practise as such without a certificate, in the same manner as if such party so convicted had never been furnished with a certificate enabling him to practise as an apothecary; and such offender, so deprived of his certificate, shall be rendered and deemed incapable in future of receiving and holding any fresh certificate, unless the said party so applying for a renewal of his certificate shall faithfully promise and undertake, and give good and sufficient security that he will not in future be guilty of the like offence.

Penalty on apothecaries refusing to compound, or unfaithfully compounding, medicines prescribe d.

Penalties.

Sect. 14. And to prevent any person or persons from practising as an apothecary, without being properly qualified to practise as such, be it further enacted, that after the 1st day of August, 1815, it shall not be lawful for any person or persons (except persons already in practice as such) to practise as an apothecary in any part of England or Wales, unless he or they shall have been examined by the said court of examiners, or the major part of them, and have received a certificate of his

Persons not to practise as apothecaries, etc., without due examination.

(a) This preamble must not be supposed to recite all the duties of an apothecary, but only those re-

ferred to by the penal enactments which follow. (*Per Parke, J., Apot h. Comp. v. Allen, 4 B. & Ad. 627.*)

1. Physicians, Surgeons, and Apothecaries.

or their being duly qualified to practise as such from the said Court of examiners, or the major part of them, as aforesaid, who are hereby authorized and required to examine all persons applying to them, for the purpose of ascertaining the skill and abilities of such person or persons in the science and practice of medicine, and his or their fitness and qualification to practise as an apothecary; and the said court of examiners, or the major part of them, are hereby empowered either to reject such person or persons, or to grant a certificate of such examination, and of his or their qualification to practise as an apothecary as aforesaid: Provided always, that no person shall be admitted to such examination until he shall have attained the full age of twenty-one years.

Proviso.

Penalty for acting without a certificate.

Sect. 20. If any person (except such as are then actually practising as such) shall, after the said 1st day of August, 1815, act or practise as an apothecary in any part of England or Wales, without having obtained such certificate as aforesaid, every person so offending shall, for every such offence, forfeit and pay the sum of £20; and if any person (except such as are then acting as such, and excepting persons who have actually served an apprenticeship, as aforesaid) shall, after the said 1st day of August, 1815, act as an assistant to an apothecary to compound and dispense medicines, without having obtained such certificate as aforesaid, every person so offending shall, for every such offence, forfeit and pay the sum of £5.

What a practising.

As to what is a practising as an apothecary within the Act; such practising is the mixing up and preparing medicines prescribed either by a physician, or by any other person, or by the apothecary himself. (*Woodward v. Ball*, 6 C. & P. 577; and see *Apothecaries' Company v. Allen*, 4 B. & Adol. 625; 1 N. & M. 413, S. C.)

The acting as a surgeon or accoucheur is not practising as an apothecary; nor would the party supplying medicine to a friend, be so. But if the party sought his living by practising as an apothecary, that is sufficient, as it is not essential that he should have gained his whole livelihood by his practice. (*Woodward v. Ball*, *supra*.)

If an apprentice to an apothecary live in a house of his master's at a distance from his master's residence, and attend patients there for his master, this is a practising as an apothecary within the Act, though his master occasionally comes to the place, and is consulted by the apprentice as to the patients. (*Apoth. Comp. v. Greenwood*, 2 B. & Ad. 708.)

But practising while under the service of another, though for the party's own benefit, has been held not a practising within the exception in the 21st sect. (*Brown v. Robinson*, 1 C. & P. 264.) Nor is the merely attending local complaints without compounding or making up prescriptions. (*Thompson v. Lewis*, M. & M. C. N. P. 255; 3 C. & P. 483, S. C.)

A surgeon may administer medicines in the cure of a surgical case without being subject to the penalty of this section; but he has no right to do so in the case of internal diseases not requiring surgical treatment, such as fever or consumption. (*Apoth. Comp. v. Lotinga*, 2 M. & Rob. 495.)

Proof of exemption.

In an action for this penalty, the proof of the certificate, or the exception as to practising before the 1st of August, 1815, rests on defendant. (*Apoth. Comp. v. Bently*, R. & M. C. N. P. 159; 1 C. & P. 538; *Apoth. Comp. v. Roby*, 5 B. & Ald. 949, S. C.)

Where it appeared that the defendant, who was sued for the penalty, never had or could have made up physicians' prescriptions prior to the 1st August, 1815, this was held to be cogent evidence to be left to the jury, and that they did right in finding that he had not practised as an apothecary, although he had administered medicines to the patients before that period. (*Apoth. Comp. v. Warburton*, 3 B. & Ald. 40.)

Nor is it sufficient, to bring a party within the exception, to show that, previously to and on the 12th of July, 1815 (when the Act received the royal assent), he was practising as an apothecary; but he must show that he was so practising on the 1st of August, 1815. (*Apoth. Comp. v. Roby*, 5 B. & Ald. 949; 1 Dowl. & Ry. 564, S. C.)

A person authorized to practise as a physician by diploma from a Scotch university, is not thereby exempted from the penalty. (*Apoth. Comp. v. Collins*, 4 B. & Ad. 604; 5 Car. & P. 519; 1 N. & M. 401, S. C.; and see *Collins v. Carnegie*, 1 Ad. & Ell. 695.)

By the 14 & 15 Vict. c. 99, s. 8, every certificate of the qualification of an apothecary which shall purport to be under the common seal of the Apothecaries' Company shall be received in evidence without proof of the seal or of the authenticity of the certificate, and shall be deemed sufficient proof that the person named therein has been, from the date of the certificate, duly qualified to practise as an apothecary in any part of England or Wales.

By the 6 Geo. 4, c. 133, s. 4, it is provided, that every person who held, or thereafter should hold, a commission or warrant as surgeon or assistant-surgeon in his Majesty's navy or army, should be entitled to practise as an apothecary in any part of England and Wales, without having undergone the examination or received the certificate required by the 55 Geo. 3. By the 11th section, the Act was to continue until the 1st of August, 1826. Those persons who held warrants prior to the 1st of August, 1826, and who were therefore entitled to practise as apothecaries, were not deprived of that right by the expiration of the Act. (*Stevenson v. Oliver*, 8 M. & W. 234.)

And so where in an action to recover charges claimed by the plaintiff as an apothecary, the plaintiff relied on the 4th section of the 6 Geo. 4, c. 133, it was held, that the evidence of the paymaster of the regiment, that he paid the plaintiff his salary as assistant-surgeon during a period of several years, and that he should not have done so without the production of the plaintiff's warrant, was sufficient to entitle the plaintiff to the right conferred by the statute. (*Milbank v. Bryant*, 3 G. & D. 31; 12 L. J., Q. B. 81.)

By the 55 Geo. 3, c. 194, s. 25, all sum and sums of money arising from conviction and recovery of penalties for offences committed against the authorities and provisions of this Act, shall be applied and disposed of in manner following: viz. one half thereof to the informer or informers, and one half thereof to the said master, wardens, and society of apothecaries as aforesaid, to be appropriated and disposed of by them in such manner as they shall deem most expedient.

1. *Physicians, Surgeons, and Apothecaries.*

Application of moneys arising from penalties.

Sect. 26. All penalties and forfeitures by virtue of this Act imposed (the manner of levying and recovering whereof is not otherwise hereby particularly directed) shall, if such penalties and forfeitures shall exceed the sum of £5, be recovered by action or suit at law, in the name of the master wardens, and society of the art and mystery of apothecaries, of the city of London, in any of his Majesty's Courts of record in England or Wales, wherein no essoin, protection or wager at law, or more than one imparlance shall be allowed; and, if such penalty or forfeiture shall amount to less than the sum of £5, then the same shall be levied and recovered by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of any justice of the peace, acting for any county, city, town, or place where the offence shall be committed (which warrant such justice is hereby empowered and required to grant, upon the confession of the party, or upon the evidence of any credible witness upon oath, and which oath such justice is hereby empowered to administer), and the overplus (if any) of the money arising by such distress and sale shall be returned upon demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping,

Recovery of fines and penalties.

2. *Chemists
and
Druggists.*

and selling the distress; and in case sufficient distress shall not be found, or such forfeitures and penalties shall not be paid forthwith, it shall be lawful for such justice, and he is hereby authorized and required, by warrant under his hand and seal, to cause the offender to be committed to the common gaol for the county, city, town, or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding one calendar month, unless such penalties, and forfeitures, and costs, shall be sooner fully paid and satisfied.

Distress not unlawful for want of form.

Sect. 27. That where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the notice or information, summons, conviction, warrant, or distress, or other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties so distraining; but the person or persons aggrieved by such irregularity may recover full satisfaction for the special damage, in an action upon the case.

Party not a trespasser *ab initio*.

By sect. 28, the Act is not to affect chemists and druggists.

This section does not exempt chemists and druggists from the regulations imposed by the Act on persons intending to practise as apothecaries. (*Apoth. Comp. v. Greenough*, 1 Q. B. 799.)

II. Chemists and Druggists.

15 & 16 Vict. c. 56.

The 15 & 16 Vict. c. 56, for regulating the qualifications of pharmaceutical chemists, confirms the charter of the Pharmaceutical Society of Great Britain, and contains various provisions for the examination of persons desirous of exercising the calling of pharmaceutical chemists, who on obtaining a certificate of qualification are entitled to be registered as pharmaceutical chemists by the registrar, who is bound on application to certify in writing whether any person whose name and address shall be furnished to him appears in the register, or is a member of the society or not.

Penalty on wilful falsification by registrar.

By sect. 15, if any registrar under this Act shall wilfully make or cause to be made any falsification in any matters relating to any registrar or certificate aforesaid, every such offender shall be deemed guilty of a misdemeanour.

Penalty for fraudulently procuring a certificate.

Sect. 16. If any person shall wilfully procure by any false or fraudulent means a certificate purporting to be a certificate of registration under this Act, or shall fraudulently exhibit a certificate purporting to be a certificate of membership of the Pharmaceutical Society every such person so offending shall be adjudged guilty of a misdemeanour.

31 & 32 Vict. c. 121.

The 15 & 16 Vict. c. 56, is amended by the "Pharmacy Act, 1868" (31 & 32 Vict. c. 121), which contains further provisions for the examination and registration of chemists and druggists, and other persons keeping open shop for the retailing, dispensing, or compounding of poisons.

Sects. 1-13 provide for the examination of such persons, and for the making and keeping of a register of pharmaceutical chemists, and of a register of chemists and druggists.

Penalty on wilful falsification

Sect. 14. Any registrar who shall wilfully make or cause to be made any falsification in any matter relating to the said registers, and any

person who shall wilfully procure or attempt to procure himself to be registered under the "Pharmacy Act" or under this Act, by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting him therein, shall be deemed guilty of a misdemeanour in England, and in Scotland of a crime or offence punishable by fine or imprisonment, and shall on conviction thereof be sentenced to be imprisoned for any term not exceeding twelve months.

Medicines.

of registrar, or for obtaining registration by false representation.

Medicines.

42 Geo. 3, c. 56; 43 Geo. 3, c. 73; 44 Geo. 3, c. 98; 52 Geo. 3, c. 150; 3 & 4 Will. 4, c. 97; 12 & 13 Vict. c. 80; 24 & 25 Vict. c. 101; 27 & 28 Vict. c. 56, s. 6.]

As to the offence of an apothecary refusing to make up medicines prescribed, or making them up improperly, and for other laws relating to medical men, see "*Medical Practitioners*," ante, 885.

Refusing to make up medicines, etc.

The duties before payable as stamp duties upon licences by persons being owners, proprietors, makers, and compounders of, and persons uttering, vending, or exposing to sale, or keeping ready for sale, any medicine liable to stamp duty, are now, by the 27 & 28 Vict. c. 56, s. 6, payable as excise duties; and such licences shall be granted by the officers of excise, who are to have the powers of officers of stamps contained in any Act relating to such duties or licences, etc.; and all duties, fines, penalties, etc., may be collected, sued for, etc., as any other excise duties, etc., as well as in the manner directed by any Acts relating to the said duties and licences.

The 25 Geo. 3, c. 79, was repealed by the 42 Geo. 3, c. 56, and new duties on medicines, named in a schedule, were charged, and provision made for the collection thereof; and by the 43 Geo. 3, c. 73, the schedule of the 42 Geo. 3, and so much of the 42 Geo. 3 as related thereto, were repealed, and a new schedule substituted; and, lastly, the 42 Geo. 3 was repealed as to "duties imposed" by the 24 & 25 Vict. c. 101; therefore these Acts are to be taken together.

Duties on.

By the 52 Geo. 3, c. 150, s. 1, a certain other list of medicines requiring stamps is given.

The 3 & 4 Will. 4, c. 97, s. 20, repeals so much of the schedule in the 52 Geo. 3, c. 150, as relates to artificial mineral waters, and waters impregnated with soda or mineral alkali, or with carbonic acid gas and compositions in a liquid or solid state, to be used for the purpose of compounding or making any of the said waters.

By sect. 2, if any person, whether licensed or not, shall utter, vend, or expose to sale, or offer or keep ready for sale, or buy, or receive, or keep for the purpose of selling by retail, either on his own or on the account of any other person, any packet, etc., or other inclosure containing any of the drugs, etc., set forth in the schedule annexed to this Act, without a paper cover or label supplied by the commissioners of stamps, pursuant to the 44 Geo. 3, c. 98, or the 42 Geo. 3, c. 56, and duly stamped, for denoting the duty charged thereon, being properly affixed thereto, so as that such packet, etc., cannot be opened and the contents taken therefrom, without tearing such stamped cover, etc., so as to prevent its being used again, the person so offending shall, for every such offence, forfeit £10, to be recovered and applied as in the said 42nd and 44th Geo. 3.

Vending medicines without a paper cover provided by the commissioners of stamps.

Medicines.

Victuallers, etc., not required to take out licence, who shall sell any of the artificial or other waters mentioned in the schedule, and which shall be drunk in their houses.

Licence for selling medicines, etc.

Penalty for selling without licence.

Duties payable before the drugs, etc., are exposed to sale, etc.

Exceptions.

Drugs sold entire by regular surgeons, etc.

Mixtures, the qualities whereof are known.

Sect. 4 provides, that it shall not be necessary for any victualler, confectioner, pastrycook, fruiterer, or other shopkeeper, who shall only sell any of the artificial or other waters mentioned in the schedule hereunto annexed, to be drunk in his or her house or shop, and which shall be actually drunk therein, to take out a licence for that purpose, under the 42 Geo. 3, c. 56, and the 44 Geo. 3, c. 98, provided such waters shall be sold by him in bottles with paper covers or labels duly stamped, properly affixed to the same as hereinbefore mentioned. [See also the 55 Geo. 3, c. 184, s. 54.]

By the 42 Geo. 3, c. 56, s. 6, every owner, proprietor, maker, and compounder of, and every person in Great Britain uttering, vending, or exposing to sale, or keeping ready for sale, any drugs, herbs, pills, waters, essences, tinctures, powders, or other preparations or compositions whatsoever, used or applied to, or to be used or applied externally or internally, as medicines for any complaint incident to the human body, or any packets, boxes, bottles, pots, phials, or other inclosures, with any such contents as aforesaid, shall annually take out a stamp licence, which shall continue in force till September 1st in each year, to commence from the day of the date of every such licence, and to be renewed yearly; and for every such licence shall be paid, if for London or within the limits of the twopenny post, 40s., if in any city, borough, or town corporate, or in Manchester, Birmingham, or Sheffield, 10s., if elsewhere, 5s. And no person shall receive any profit as the owner of, or make or compound, or utter, vend, or expose to sale, or keep ready for sale, any drugs, herbs, etc., or any packets, etc., or other inclosure as aforesaid, with any such contents as aforesaid, liable to the duties hereby granted, without a licence, on pain of £20 for every such offence.

Sect. 3. By that statute the duties are to be paid by the owners, etc., of such drugs, etc., before delivered out of their possession for sale, or in any way offered or exposed for sale, or kept ready for sale, and not in bulk in any place by any such owner, etc., or any one in their behalf.

Sect. 4. Provided that the same shall not extend to any drugs named or contained in either of the books of rates; (that is to say), the book of rates subscribed by Sir *Harbottle Grimstone*, Bart., and referred to by the 12 Car. 2, c. 4, and an additional book of rates signed by the right honourable *Spencer Compton*, and referred to by 11 Geo. 1, c. 7.—Nor to any medicinal drug which shall be vended entire, without any mixture or composition with any other drug or ingredients, by any surgeon, apothecary, chemist, or druggist, who hath served a regular apprenticeship, or by any person who hath served as a surgeon in the navy or army, under any commission or appointment, or by any other person licensed as aforesaid; but all such drugs may be uttered and vended by any such persons, freed from the said duties. And see the 52 Geo. 3, c. 150.

Sect. 5. Provided also, that nothing herein shall extend to charge any mixture, composition, or preparation whatsoever, uttered or vended by any such surgeon, etc., or by any person who hath served as a surgeon in the navy or army as aforesaid, the different denominations, properties, and efficacies of which mixtures, etc., are known and approved; and wherein the person compounding or vending the same had not, nor claims to have, any secret or unknown art for the mixing thereof, nor claims to have any exclusive right in the mixing or vending the same, and which mixtures, etc., are not prepared or vended by the authority of *letters patent*; nor which are by advertisement recommended by the owners, makers, or first vendors thereof, as nostrums, or proprietary medicines, or as specifics for prevention or cure of any distemper or complaints. And see the 52 Geo. 3, c. 150.

Sect. 10. Every person making, compounding, preparing, uttering, vending, or exposing to sale, or keeping ready for sale, any such drugs, herbs, etc., or any packets, etc., or other inclosures as aforesaid, with any such contents as aforesaid subject to the duties hereby granted, shall, from time to time, apply to the commissioners of stamps, or their officers, for paper covers, wrappers, or labels, to be pasted, stuck, fastened, or affixed to such packets, etc., or other inclosures, with any such contents as aforesaid; and shall, at the same time, deliver to such officer a note containing his name and place of abode, and the place where the drug, herb, medicine, medicament, preparation, or composition, in respect whereof such application is made, is first sold; and such note shall be filed by such officer.

Medicines.

Venders to apply to the commissioners for covers, and

deliver their name and residence in writing.

Sect. 11. And the commissioners, or the major part of them, shall cause to be printed or impressed on the said papers, covers, etc., some mark or particular word to denote the said duties, and the rate thereof; and shall cause to be delivered from time to time to every such licensed owner, etc., as occasion shall require, sufficient covers, etc., for the purpose aforesaid, on payment of the stamp duty thereon; and every packet, etc., and other inclosure, with the contents as aforesaid, as soon as made and kept ready for sale, and before the same be uttered, vended, or exposed to sale by any person to any person, either wholesale or retail, shall have sufficiently pasted, stuck, fastened, or affixed thereto, such cover, stamped, etc., as aforesaid, as the commissioners shall direct, and the said commissioners shall, from time to time, direct the manner in which such covers, etc., shall be affixed, and make such regulations in that behalf as to them shall seem necessary to prevent any such covers, etc., being made use of again, after they shall have been disposed of, which regulations shall be delivered to every owner, etc., at the time of taking out his first or future licence, if any variation in such regulations shall have been made.

Covers to be marked with duties, and affixed to medicines before sale.

In the schedule (C) of the 44 Geo. 3, c. 98, certain other allowances are substituted for those given by sect. 16 of the above Act; and in sect. 1 of the 12 & 13 Vict. c. 80, these allowances are recited amongst others and repealed.

By sect. 2 it is enacted, that in lieu of the said several allowances hereby repealed as aforesaid, there shall be allowed (amongst others) to any person who shall, at one and the same time, purchase of the commissioners of inland revenue, at their office in London or Edinburgh, stamped labels for medicines, the duty whereon shall amount to £50 or upwards, £5 for every £100, and so in proportion for any greater or less sum, not under £50.

By sect. 3 the allowances are to be under the care of the commissioners of inland revenue, and all former powers and provisions in force in relation to the allowances, as far as they are applicable and consistent, are to remain in force.

By the 43 Geo. 3, c. 73, s. 2, if any person who shall receive from any proprietor, compounder, or original or first vender, or any agent of theirs, or person employed by them, any article subject to any duty granted by the aforesaid Act, for the purpose of selling the same again, without the label denoting the duty being first duly affixed thereto, and shall not, within ten days, return the same to the person from whom such article was received, or within that time give information thereof to the commissioners in Somerset Place, and deposit such article with the nearest distributor of stamps, he shall forfeit, for every such offence, £20, to be recovered as any penalty imposed by the said Act may be recovered under the said Act and this Act.

Penalty on persons receiving articles without labels, and not returning them, etc.

By the 42 Geo. 3, c. 56, s. 12, no person shall utter, vend, or expose to sale, or offer or keep ready for sale, or buy or receive, or keep to sell

Penalty on persons vending me-

Medicines.

dicines without labels.

by retail, either on his own account, or on behalf of another, any packet, etc., or other inclosure containing any drug, herb, etc., subject to the stamp duties hereby imposed, unless the cover, etc., hereby directed to be pasted, etc., shall be well and sufficiently pasted, etc., in such manner as the said commissioners direct, and marked and stamped as directed, previous to sale, etc., or shall have any cover, etc., pasted, etc., marked or stamped with a mark or stamp of less denomination or value than by this Act directed, under forfeiture for every packet, etc., or other inclosure, containing any such drug, etc., so uttered, vended, or exposed to sale, or kept ready for sale, of the sum of £10, to be recovered and applied as hereinafter directed.

Persons fraudulently using covers.

Sects. 13, 14, 15. If any person shall fraudulently cut, tear, or take off any such mark or stamp from any such packet, etc., or other inclosure, after the same hath been sold as aforesaid; or fraudulently affix to any such packet, etc., or other inclosure, any cover so marked, etc., the same having been before used; or shall buy or sell any such cover, in order to be again made use of; or shall buy or sell, or expose to sale, any such packet, etc., with such cover before used affixed thereto; he shall forfeit £20. And either buyer or seller informing against the other shall be indemnified, and shall be admitted to give evidence, and receive the same benefit as any other informer.

On the outside of parcels containing twelve inclosures shall be written "medicines," etc.

By the 43 Geo. 3, c. 73, s. 3, upon the outside of all parcels, boxes, trunks, or packages in which shall be contained one dozen or more of packets, etc., or in other inclosures, containing any article in the said Acts mentioned, and subject to duty under the said Act or this Act, sent by any proprietor, compounder, or original vender thereof, or any agent of theirs, or person employed by them, to any retail vender, by any public conveyance, or which shall be about to be exported, the word "medicines" shall be written; and also the name of such proprietor, compounder, or original vender, and of the person or persons sending or exporting the same, if not such proprietor, etc.; and it shall be lawful for any officers of the customs or excise, or any person appointed by the commissioners of stamps, by authority in writing of any magistrate or justice (which authority any magistrate or justice is hereby required to grant, on information before him on oath that there is reason to suspect that any such parcel, etc., contains such articles subject to such duties, and not properly labelled), to open such parcels, etc., and examine if the proper labels be duly affixed to the articles therein contained; and in case such labels are not fixed thereto, according to the provisions of the aforesaid Act and this Act, to seize the same, and send or deliver the same to the said commissioners at Somerset Place, who are hereby authorized to reward the officer or officers making any such seizure as to them shall seem fit.

Officers may open suspected parcels, and seize articles not abelled.

Covers defaced in affixing them on the articles, may be returned to, and replaced at the stamp office.

By the 42 Geo. 3, c. 56, s. 18, in case any covers, etc., shall be damaged, etc., in affixing the same upon the articles aforesaid, or otherwise, so as to be unfit for use, such persons, being duly licensed pursuant to this Act, may bring such covers, together with the articles to which they were affixed, to the commissioners or their head officer, and on oath (or affirmation, if Quakers), thereof made to the satisfaction of such commissioners or head officer (who may administer the same, and examine into all the circumstances), that such covers, etc., have not been used for any other purpose, or in any other manner, nor have been fraudulently re-bought or returned after being used, and that no money or other consideration had been paid for the same, except the money first paid for such covers, etc., at the stamp office or other places appointed for the distribution thereof; then the commissioners are required, after destroying such defaced covers, etc., to deliver to such licensed person other covers, etc., of the same denomination instead thereof, without demanding or taking for the same any consideration.

Sect. 17. Every person who shall make or expose to sale any medicines liable to the said duties shall, before he obtains a licence, give notice in writing at the next stamp office of the shop or place he uses or intends to make use of, which notice shall be sent to the commissioners for the time being, or to their officers next adjacent to the place used or intended to be made use of; and the like notice shall be given as often as any such person shall change his place; and such notice shall contain the particular places used, or intended to be made use of, on pain that every person making default or giving false notice shall forfeit £10.

Medicines.

Notice to be
given of the
place of making
or vending medi-
cines.

Sect. 19. And in order to obviate any doubts as to what medicines the said duties shall extend, a schedule (A.) is annexed, and the said duties shall extend to every article named therein, or by whatsoever other name the same hath been or may be called or known. And all pills, etc., wherein the person making, preparing, selling, or exposing to sale the same, hath or claims to have any secret art, or exclusive right to the making or preparing thereof by letters patent, or which are by advertisement recommended by the maker, vender, or proprietor, as nostrums or medicines for prevention or cure of distempers or complaints as aforesaid, shall be liable to the said duties.

To what medi-
cines this Act
shall extend.

Sect. 20. The powers of former stamp Acts extended to this Act.

Sects. 23, 25. All pecuniary penalties by this Act imposed may be sued for in the Courts at Westminster; or be recovered before any neighbouring justice, on complaint made within *six* months after the offence committed; who shall summon the party accused, and also the witnesses, on either side, and, upon confession or oath of one witness, give judgment therein, and issue his warrant to levy such pecuniary penalty by distress; and cause sale to be made, in case it be not redeemed in six days; and, for want of sufficient distress, the offender shall be committed to prison for three months, unless such penalty be sooner paid. And if any person find himself aggrieved by the judgment of such justice, he may, on giving security to the amount of such penalty and costs, in case such judgment be affirmed, appeal to the next sessions, whose determination shall be final, and in case judgment be affirmed, they may award costs of appeal as to them shall seem meet.

Penalties, how to be recovered.

Appeal.

Sect. 26. Witnesses not appearing, having been duly summoned, without reasonable cause to be allowed by such justice, shall forfeit 40s., to be recovered in like manner.

Witnesses not appearing.

Sect. 27. And the justice before whom any offender shall be convicted as aforesaid shall cause the conviction to be made out in the following form, or to the same effect.

Conviction.

Be it remembered, that, on the day of , in the year
of our Lord , in the county of , A. O., of
was convicted before me, J. P., one of his Majesty's justices of the peace for the said
county, residing near the place where the offence was committed, for that the said
A. O. on the day of , now last past, did, contrary to the
form of the statute in that case made and provided [here state the offence]; and
I do declare and adjudge that he, the said A. O., hath forfeited the sum of
of lawful money of Great Britain, for the offence aforesaid, to be distributed as the
law directs. Given under my hand and seal the day of .

Sects. 22, 24. All penalties, if sued for *within six* calendar months of the time of being incurred, shall be distributed half to the king, and half with full costs to the person who shall inform and sue: if *after six* calendar months, the whole shall go to the king.

Application of the penalties.

By the 43 Geo. 3, c. 73, s. 4, it shall not be lawful for any person whatever to commence, prosecute, enter, or file, or cause to be commenced,

No action or proceeding unless in name of attor.

Merchandise Marks.

ney-general, or some one appointed by commissioners of stamps.

etc., any action, etc., in any of his Majesty's Courts against any person, or to proceed before any justice, or before any magistrate in a summary way, for the recovery of any fine, etc., incurred by virtue of the Act of the 42nd year aforesaid, unless the same be commenced, etc., in the name of his Majesty's attorney-general, and by his authority, or by and in the name of some officer or person appointed for that purpose by the commissioners of stamps; and if any action, etc., shall be commenced, etc., otherwise than as aforesaid, the same and all proceedings thereupon had, are hereby declared null and void; and the said Courts, justices, or magistrates, wherein, or before whom such action or actions, etc., shall be so commenced, etc., shall not permit any proceeding to be had thereupon.

Limitation of actions.

Penalties may be mitigated.

Sect. 5. Provided always, that every action, etc., brought, entered, or filed in any Court, or before any justice or magistrate, for any pecuniary penalty under the said Act or this Act, shall be commenced within three months after forfeiture, and not afterwards; and any justice or magistrate may, when he shall see cause, mitigate any such penalty, the reasonable costs and charges of the officer, person, or informer, as well in making the discovery as in prosecuting the same, being always allowed (if demanded) over and above such mitigation, and so as such mitigation be not less than one fourth part.

Merchandise Marks.

By the "Merchandise Marks Act, 1862," 25 & 26 Vict. c. 88, entitled, "An Act to amend the Law relating to the Fraudulent Marking of Merchandise," after reciting that it is expedient to amend the laws relating to the fraudulent marking of merchandise, and to the sale of merchandise falsely marked for the purpose of fraud, it is enacted that:—

Construction of words.

Sect. 1. In the construction of this Act the word "person" shall include any person, whether a subject of her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this country or of any of her Majesty's colonies or dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of her Majesty or not, or some of such persons subjects of her Majesty and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established or carry on business within her Majesty's dominions or elsewhere, or partly within her Majesty's dominions and partly elsewhere; the word "mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description; and the expression "trade mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture, or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark, or sign which in pursuance of any statute or statutes for the time being in force relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired

under the provisions of such statutes or any of them; the word "misdemeanour" shall include crime and offence in Scotland; and the word "Court" shall include any sheriff or sheriff substitute in Scotland.

Sect. 2. Every person who, with intent to defraud, or to enable another to defraud, any person, shall forge or counterfeit, or cause or procure to be forged or counterfeited, any trade mark, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article not being the manufacture, workmanship, production, or merchandise of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandise of any person whose trade mark shall be so forged or counterfeited, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any chattel or article, not being the particular or peculiar description of manufacture, workmanship, production, or merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark, shall be guilty of a misdemeanour, and every person so committing a misdemeanour shall also forfeit to her Majesty every chattel and article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark or forged or counterfeited trade mark as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeited trade mark as aforesaid, shall be forfeited to her Majesty; and the Court before which any such misdemeanour shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such Court shall think fit.

Forging a trade mark or falsely applying any trade mark with intent to defraud, a misdemeanour.

Sect. 3. Every person who, with intent to defraud, or to enable another to defraud, any person, shall apply or cause or procure to be applied any trade mark or any forged or counterfeited trade mark to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, on, or with which any chattel or article shall be intended to be sold or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any chattel or article, or cause or procure any chattel or article to be enclosed or placed in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach or cause or procure to be applied or attached to any chattel or article any case, cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach any chattel or article, or cause or procure any chattel or article to be enclosed, placed, or attached in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing having thereon any trade mark of any other person, shall be guilty of a misdemeanour, and every person so committing a misdemeanour shall also forfeit to her Majesty every such chattel and article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid, and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been applied, and also every instrument in the possession or power of such

Applying a forged trade mark to any vessel, case, wrapper, etc., in or with which any article is sold or intended to be sold, a misdemeanour.

Merchandise Marks.

Selling articles with forged or false trade marks after 31st December, 1863, penalty equal to value of article sold, and a sum not exceeding £5 nor less than 10s.

Additions to and alterations of trade marks made with intent to defraud to be deemed forgeries.

Any person who, after 31st December, 1863, shall have sold an article having a false trade mark to be bound to give information where he procured it.

Power to justices to summon parties refusing to give information.

person for applying any such trade mark or forged or counterfeit trade mark as aforesaid, shall be forfeited to her Majesty, and the Court before which any such misdemeanour shall be tried may order such forfeited articles as aforesaid to be destroyed or otherwise disposed of as such Court shall think fit.

Sect. 4. Every person who, after the 31st December, 1863, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such chattel or article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall be so sold or uttered or exposed for sale or other purpose as aforesaid, shall for every such offence forfeit and pay to her Majesty a sum of money equal to the value of the chattel or article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding £5 and not less than 10s.

Sect. 5. Every addition to and every alteration of, and also every imitation of any trade mark which shall be made, applied, or used with intent to defraud or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged, and counterfeited trade mark within the meaning of this Act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark or any such imitation of a trade mark as aforesaid done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

Sect. 6. Where any person who, at any time after the 31st December, 1863, shall have sold, uttered, or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark, or such forged or counterfeited trade mark as aforesaid, be in, upon, about, or with such chattel or article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such chattel or article shall have been sold or exposed for sale, such person shall be bound upon demand in writing delivered to him or left for him at his last known dwelling-house or at the place of sale or exposure for sale by or on the behalf of any person whose trade mark shall have been so forged or counterfeited, or used without lawful authority or excuse as aforesaid, to give to the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information in writing of the name and address of the person from whom he shall have purchased or obtained such chattel or article, and of the time when he obtained the same; and it shall be lawful for any justice of the peace, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with to order

such information to be given within a certain time to be appointed by him; and any such party who shall refuse or neglect to comply with such order shall for every such offence forfeit and pay to her Majesty the sum of £5, and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark together with which such chattel or article was sold, uttered, or exposed for sale or other purpose as aforesaid at the time of such selling, uttering, or exposing, was a forged, counterfeited, and false trade mark, or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

Merchandise Marks.

Penalty for refusal £5.

Sect. 7. Every person who, with intent to defraud or to enable another to defraud, shall put or cause or procure to be put upon any chattel or article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which any chattel or article shall be intended to be or shall be sold or uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any chattel or article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or any part thereof, or of the place or country in which such chattel or article shall have been made, manufactured, or produced, or shall put or cause or procure to be put upon any such chattel or article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark for the purpose of falsely indicating such chattel or article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright, shall for every such offence forfeit and pay to her Majesty a sum of money equal to the value of the chattel or article so sold or uttered or exposed for sale, and a further sum not exceeding £5 and not less than 10s.

Marking any false indication of quantity, etc., upon an article with intent to defraud, penalty a sum equal to the value of the article, and a further sum not exceeding £5 and not less than 10s.

Sect. 8. Every person who, after the 31st December, 1863, shall sell, utter, or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any chattel or article upon which shall have been, to his knowledge, put, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such chattel or article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put, or upon any case, frame, or other thing used or employed to expose or exhibit such chattel or article for sale shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article or any part thereof, or the place or country in which such chattel or article shall have been made, manufactured, or produced, shall for every such offence forfeit and pay to her Majesty a sum not exceeding £5 and not less than 5s.

Selling or exposing for sale after the 31st December, 1863, articles with false statement of quantities, etc., penalty not more than £5 or less than 5s.

Sect. 9. Provided always, that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any chattel or article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such chattel or article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such chattel or article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale any chattel or article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

Provido that it shall not be an offence to apply names or words known to be used for indicating particular classes of manufactures.

Merchandise Marks.

Description of trade marks and forged trade marks in indictments, etc.

Sect. 10. In every indictment, pleading, proceeding, and document whatsoever in which any trade mark shall be intended to be mentioned, it shall be sufficient to mention or state the same to be a trade mark without further or otherwise describing such trade mark, or setting forth any copy or facsimile thereof; and in every indictment, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark, it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark without further or otherwise describing such forged or counterfeit trade mark, or setting forth any copy or facsimile thereof.

Conviction not to affect any right or civil remedy.

Sect. 11. The provisions in this Act contained of or concerning any act or any proceeding, judgment, or conviction for any act hereby declared to be a misdemeanour or offence, shall not nor shall any of them take away, diminish, or prejudicially affect any suit, process, proceeding, right, or remedy which any person aggrieved by such act may be entitled to at law, in equity, or otherwise, and shall not nor shall any of them exempt or excuse any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding: Provided always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment for a misdemeanour at common law or otherwise, or of any proceeding under the provisions of this Act.

Intent to defraud, etc., any particular person need not be alleged in an indictment, etc., or proved.

Sect. 12. In every indictment, information, conviction, pleading, and proceeding against any person for any misdemeanour or other offence against the provisions of this Act in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made a misdemeanour or other offence did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or information for any such misdemeanour, and on the hearing of any information or charge of or for any such other offence as aforesaid, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove with respect to every such misdemeanour and offence that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Persons who aid in the commission of a misdemeanour to be also guilty.

Sect. 13. Every person who shall aid, abet, counsel, or procure the commission of any offence which is by this Act made a misdemeanour shall also be guilty of a misdemeanour.

Punishment for misdemeanour under this Act.

Sect. 14. Every person who shall be convicted or found guilty of any offence which is by this Act made a misdemeanour shall be liable, at the discretion of the Court and as the Court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment with or without hard labour and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied.

Recovery of penalties.

Sect. 15. In every case in which any person shall have committed or done any offence or act whereby he shall have forfeited or become liable to pay to her Majesty any of the penalties or sums of money mentioned in the provisions of this Act, every such penalty or sum of money shall or may be recovered in England, Wales, or Ireland, in an action of debt, etc., or instead of any such action being commenced such penalty or sum of money shall or may in England or Wales be recovered by a summary

proceeding before two justices of the peace having jurisdiction in the county or place where the party offending shall reside or have any place of business, or in the county or place in which the offence shall have been committed, etc.

Sect. 16. In every case in which any such penalty or sum of money forfeited to her Majesty as hereinbefore mentioned shall be sought to be recovered by a summary proceeding before two justices of the peace, the offence or act by the committing or doing of which such penalty or sum of money shall have been so forfeited shall be and be deemed to be an offence and act within the meaning of a statute passed in the twelfth year of the reign of her present Majesty, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders;" and the information, conviction of the offender, and other proceedings for the recovery of the penalty or sum so forfeited shall be had according to the provisions of the said Act.

Summary proceedings before justices to be within 11 & 12 Vict. c. 43.

Sect. 18. No person shall commence any action or proceeding for the recovery of any penalty, or procuring the conviction of any offender in manner hereinbefore provided, after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

Limitations of actions, etc.

Sect. 19. In every case in which at any time after the 31st December, 1863, any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such chattel or article shall be sold or contracted to be sold, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such chattel or article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

After 31st December, 1863, vendor of an article with a trade mark to be deemed to contract that the mark is genuine.

Sect. 20. In every case in which at any time after the 31st December, 1863, any person shall sell or contract to sell (whether by writing or not) to any other person any chattel or article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such chattel or article shall be sold or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced, the sale or contract to sell shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement, or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.

After 31st December, 1863, vendor of an article with description upon it of its quantity to be deemed to contract that the description was true.

Sect. 25. Nothing in this Act contained shall be construed to affect the rights and privileges of the corporation of cutlers of the liberty of Hallamshire, in the county of York, nor shall anything in this Act contained be construed in any way to repeal or make void any of the provisions contained in the 59 Geo. 3, c. 7, intituled "An Act to regulate the Cutlery Trade in England."

Act not to affect the corporation of cutlers of Hallamshire, nor to repeal 59 Geo. 3, c. 7.

Metals.

By the 24 & 25 Vict. c. 110, entitled "An Act for Regulating the Business of Dealers in Old Metals," it is enacted as follows;

Short Title.

Sect. 1. This Act may be cited for all purposes as "The Old Metal Dealers Act, 1861."

Commencement of Act.

Sect. 2. This Act shall come into operation on the 1st of January, 1862.

Definition of terms.

Sect. 3. In the construction and for the purposes of this Act the term "dealer in old metals" shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores, and the term "old metals" shall mean the said articles.

Penalty on dealer in old metals being in possession of stolen property.

Sect. 4. It shall be lawful for any justice of the peace, upon complaint made before him, upon oath, that the complainant has reason to believe and does believe that any old metal stolen or unlawfully obtained is kept in any house, shop, room, or place by any dealer in old metals within the limits of the jurisdiction of such justice, to give authority, by special warrant, to any constable or police officer to enter, in the daytime, such house, shop, room, or other place, with such assistance as may be necessary, and to search for and seize all such old metals there found, and to carry all the articles so seized before the justice issuing the said warrant, or some other justice exercising similar jurisdiction, and such justice shall thereupon issue a summons requiring such dealer to appear before two justices, at a time and place to be named in such summons, and if such dealer shall not then and there prove to the satisfaction of such justices how he came by the said articles, or if any such dealer shall be found in possession of any old metal which has been stolen or unlawfully obtained, and on his being taken or summoned before two justices it shall be proved to the satisfaction of such justices that at the time when he received it he had reasonable cause to believe it to have been stolen or unlawfully obtained, then in either of such cases such dealer shall be liable to a penalty not exceeding £5, and for any subsequent offence to a penalty not exceeding £20, or at the discretion of the justices in the case of such second or subsequent offence shall be imprisoned and kept to hard labour for any period not exceeding three calendar months: Provided always, that nothing herein contained shall interfere with or affect any proceeding by indictment to which such dealer in old metals may be liable for feloniously and knowingly receiving stolen goods, but no person shall be prosecuted by indictment and proceeded against under this Act for the same offence.

Justices may order dealer to be registered (a).

Sect. 5. When any dealer in old metals is convicted of either of the offences aforesaid, it shall be lawful for such justices, or, on proof of such conviction, for any other two justices of the same petty sessional district of a county, or city or borough, on proof of such conviction, to order and direct that such dealer shall be registered at the principal police office of such district or city or borough in a book to be kept by the chief officer of police for the purpose, according to the form No. 1 in the schedule to this Act annexed, and from and after such registration such dealer shall

(a) By the 30 & 31 Vict. c. 119, s. 11, and c. 128, s. 11, *Vol. V.*, tit. "Stores," every conviction under those Acts of a dealer in old metals

is for the purposes of registration, and its consequences to be equivalent to a conviction under this Act.

be subject to and shall conform to the several regulations hereinafter provided, for such period, not exceeding three years, as such justices shall order; and if such dealer shall during such period be convicted of any offence under this Act, the justices so convicting him may order such period to be extended for not more than three years from the time when such period would otherwise expire; and in like manner, whilst such dealer is subject to the regulations of this Act, on any further conviction under this Act, and as often as such further conviction shall take place, the justices so convicting him may order the period for which he is then subject to such regulations to be extended for not more than three years from the time when such period would otherwise expire: Provided always, that where any dealer in old metals who is also a dealer in marine stores within the meaning of the four hundred and eightieth section of the "Merchant Shipping Act, 1854," is registered as aforesaid, he shall likewise conform to the regulations contained in the said section of the said Act, and shall be liable to the penalties in the said section provided for not conforming to such regulations.

Sect. 6. Every dealer in old metals who is subject to the regulations of this Act as aforesaid, shall upon removing to any other place of business give notice of such removal at the police office where he is registered, and if he shall continue to carry on business as a dealer in old metals without giving such notice, he shall incur a penalty not exceeding £5, and a penalty not exceeding 10s. for every day after the first on which he continues to carry on such business without giving such notice; and where such dealer shall remove to any place out of the petty sessional district of a county or the city or borough in which he has been registered, it shall be the duty of the superintendent of police for such district, city, or borough to transmit a certificate of such registration signed by himself, which shall be evidence of such registration, together with a certified copy of any order of justices, as to the period for which such dealer is to be subject to the regulations of this Act, to the clerk of the justices for the district, city, or borough in which such dealer has taken up his residence, and any of the justices of such district, city, or borough, may thereupon issue a summons to such dealer to appear before two justices, and if it shall appear to such justices that he intends carrying on business as a dealer in old metals, such justices may order him to be registered in the same manner as provided in the fifth section of this Act, and such registration shall have the same effect, during the period for which such dealer is to be subject to the regulations of this Act by any order of justices as aforesaid, as in the said section provided.

Dealer to give notice of change of place of business.

Sect. 7. It shall be lawful for two justices by order in writing to authorize one or more inspectors or sergeants of police to visit at any time the places of business and inspect the goods and books of dealers in old metals who are subject to the regulations of this Act as aforesaid, and who carry on business within the district of a county or the city or borough for which such justices act, and every such inspector or sergeant shall and is hereby empowered to record in the book hereinafter required to be kept by every such dealer in old metals the day and hour of his visit, and place opposite the entry of every article examined by him his initials or name in attestation of the same.

Inspectors and sergeants of police to visit places of business of registered dealers in old metals.

Sect. 8. Every dealer in old metals who is registered as aforesaid shall, during the period which the justices shall order as above provided, conform to the following regulations (that is to say):

Regulations to be observed by registered dealers in old metals.

1. He shall keep a book or books fairly written, and shall enter therein, according to the Form No. 2 in the schedule to this Act annexed, an account of all such old metals as he may from time to time become possessed of, stating in respect of each article the name of the person who purchased or received the same, and the time at

which and the name of the person from whom he purchased or received the same, adding in the case of every such last-mentioned person a description of his business and place of abode; and he shall also enter in such book or books, according to the Form No. 3 in the schedule to this Act annexed, an account of all such old metals as he may from time to time sell or dispose of, stating in respect of such old metals the name of the person to whom he sold or disposed of the same, adding a description of his business and place of abode; and every such entry in such book or books shall be deemed and taken, unless the contrary be shown, to have been made by or with the authority of the dealer in old metals to whom such book or books belong:

2. He shall not by himself or any other person purchase or receive any old metals of any description before the hour of nine in the morning nor after the hour of six in the evening, nor shall he by himself or any other person purchase or receive old metals of any description from any person apparently under the age of sixteen years, nor shall he employ any servant or apprentice or any other person under the age of sixteen years to purchase or receive old metals of any description:
3. He shall produce to any inspector or sergeant of police, authorized as in the last preceding section provided, whenever thereto requested, the book or books required to be kept as aforesaid, and any old metals purchased or received by him then in his possession; and such old metals shall be deemed to be in the possession of such dealer when they are placed in any house, outhouse, yard, garden, or place occupied by him, or shall have been removed with his knowledge and permission to any other place without a *bonâ fide* sale of such old metals having been made by him.
4. He shall without delay give notice to the officer on duty at the police station nearest to the place where he carries on business of any articles then in his possession or which shall thereafter come into his possession answering the description of any articles which have been stolen, embezzled, or fraudulently obtained, of which printed or written information, containing a description of such articles, is given to him by any officer of police:
5. He shall keep all old metals purchased or received by him without changing the form in which such articles were when so purchased, or disposing of the same in any way for a period of forty-eight hours after such article has been purchased or received:

For any act or default contrary to the foregoing regulations done or made by any registered dealer in old metals, during the period which the justices shall order as above provided, he shall incur a penalty of not less than 20s. and not exceeding £5, and for every subsequent offence a penalty of not less than £5 and not exceeding £20.

Recovery of penalties.

Sect. 9. Every penalty hereby incurred and all costs directed to be paid upon any information or complaint laid under the provisions of this Act shall be recovered summarily before any two or more justices of the peace in the manner directed by 11 & 12 Vict. c. 43, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes; and where any costs or expenses are incurred in or about the prosecution or carrying into effect of this Act, which are not recoverable under the provisions of the above Act, it shall be lawful for any two justices of the peace of any county or borough, if they shall think fit, to order and direct the same to be paid to the party incurring the same out of the same fund and in the same manner as is directed by the Act of the seventh year, of the reign of his late Majesty king George the fourth, chapter sixty-four, in cases of felony and misdemeanour.

Sect. 10. The justices imposing any penalty under this Act may, if they shall think fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in and towards payment of the expenses of the proceedings; and subject to such directions or specific application as aforesaid, all penalties shall be paid to the treasurer of the county or of the city or borough within which such penalties are recovered, and shall be carried to and form part of the county fund or of the city or borough fund of such county or of such city or borough respectively.

Metals.

Application of penalties.

Sect. 11. In all cases of convictions under the fourth section of this Act, and in all other cases of convictions under this Act where a sum of money exceeding £5 shall be adjudged to be paid, any person who thinks himself aggrieved by such conviction may appeal to the next Court of general or quarter sessions which is holden not less than twelve days after the day of such refusal or conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried; provided that such person shall give to the justices or the complainant, as the case may be, a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also within such periods respectively enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions and try such appeal, and abide the judgment of the Court thereupon, and pay such costs as shall be by the Court awarded; and the Court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet: Provided always, that in case the conviction appealed against shall be under the fourth section of this Act, and an order for registration has been made on such conviction, the party so convicted shall not be subject to the regulations of this Act until after such appeal is heard and determined against such party.

Appeal in certain cases.

Sect. 12. This Act shall extend to England only.

Limit of Act.

SCHEDULE.

No. 1.

Register of Dealers in Old Metals.

Date of Registration.	Date of Conviction.	Period for which to be subject to Regulations of this Act.	Name.	Place of Abode and Business.

Military Law.

No. 2.

Entry of Purchases and Receipts.

Day of Purchase or Receipt, and Hour of Day.	Description of old Metal purchased or received.	Name and Surname of Person who purchased or received.	Name and Surname of Person from whom purchased or received.	Business and Place of Abode of person from whom purchased or received.

No. 3.

Entry of Sales.

Day of Sale.	Description of Old Metal sold.	Name and Surname of Person to whom sold.	Business and Place of Abode or Business of Person to whom sold.

Military Law.

The ancient military order was, when the king was to be served with soldiers for his war, a knight or esquire of the country that had revenues, farmers, and tenants, would covenant with the king by indenture enrolled in the Exchequer, to serve the king for such a term with so many men especially named in a list, in his war. (1 *Inst.* 71.)

In consequence whereof, there are many regulations in divers statutes concerning the same; which, however, being now out of use, it is thought sufficient merely to mention the principal thereof: viz., 13 Edw. 1, c. 6; 18 Hen. 6, c. 19; 7 Hen. 7, c. 1; 2 & 3 Edw. 6, c. 2; 4 & 5 P. & M. c. 8.

The laws and constitution of this kingdom know no such state as that of a perpetual standing soldier, bred up to no other profession than that of war. But it has for many years past been judged necessary by our Legislature, for the safety of the kingdom, the defence of the possessions

of the crown, and the preservation of the balance of power, to maintain, even in time of peace, a standing body of troops, under the command of the crown, who are, however, *ipso facto* disbanded at the expiration of every year, unless continued by Parliament; and if, from experience past, we may judge of future events, the army is now lastingly engrafted into the British constitution; with this singularly fortunate circumstance, that any branch of the Legislature may annually put an end to its legal existence, by refusing to concur in its continuance. (1 *Bl. Com.* 408, 414, 421.)

The military state includes the whole of the soldiery, or such persons as are peculiarly appointed among the rest of the people for the safeguard and defence of the realm. (*Ib.*, 408.)

A soldier, observed *Mansfield, C.J.*, is gifted with all the rights of other citizens, and is bound to all the duties of other citizens; and he is as much bound to prevent a breach of the peace, or a felony, as any other citizen. If it is necessary for the purpose of the preventing mischief, or for the execution of the law, it is not only the right of soldiers, but it is their duty, to exert themselves in assisting the execution of a legal process or to prevent any crime or mischief being committed. (*Burdett v. Abbot*, 4 *Taunt. Rep.* 449, 450.)

A magistrate who calls upon soldiers to suppress a riot is not bound to go with them in person; it is enough if he gives them authority. (*R. v. Pinney*, 3 *B. & Adol.* 947; *Vol. V.*, tit. "*Riot.*")

The respective members of the military force will be arranged and treated of under the subdivisions respectively following:—

I. *Regular Soldiers*, p. 909.

II. *Royal Marine Forces whilst on Shore*, p. 944.

III. *Militia*, p. 965.

IV. *Volunteers*, p. 979.

V. *Yeomanry*, p. 985.

I. The Regular Soldiers.

[43 *Geo.* 3, c. 61; 7 *Geo.* 4, c. 16; 2 *Will.* 4, c. 53; 2 & 3 *Will.* 4, cc. 97, 106; 19 & 20 *Vict.* c. 15; 30 & 31 *Vict.* c. 110; 32 *Vict.* cc. 4, 5.]

As to soldiers enlisting into foreign service, see tit. "*Foreign Service*," *Vol. II.*

As to endeavouring to seduce soldiers from their duty, or to commit mutiny, see "*Treason*," *Vol. V.*

As to the postage of letters of soldiers, see *post*, "*Post Office*."

The present regulations for the army and the royal marine forces when on shore are chiefly contained in the yearly Acts against mutiny and desertion; the substance of which, so far as justices of the peace and other civil officers are concerned, is contained below.

1. *The Mutiny Act*, 909.

2. *Personating Pensioners, Forgery, etc.*, 938.

3. *Relief from the Penalties of the Vagrant Acts*, 943.

1. THE MUTINY ACT.

The 32 *Vict.* c. 4, entitled, "An Act for Punishing Mutiny and Desertion, and for the Better Payment of the Army and their Quarters" 32 *Vict.* c. 4.

1. *The Regular Soldiers.*

(3rd April, 1868) (a), after reciting that the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law, enacts as follows :—

As to execution of sentences of penal servitude in the United Kingdom.

Sect. 18. Whenever her Majesty shall intend that any sentence of penal servitude heretofore or hereafter passed upon any offender by any court-martial shall be carried into execution for the term specified in such sentence or for any shorter term, or shall be graciously pleased to commute as aforesaid to penal servitude any sentence of death passed by any such court, the sentence, together with her Majesty's pleasure thereupon, shall be notified in writing by the officer commanding in chief her Majesty's army in Great Britain and Ireland, or by the adjutant-general, or by the secretary of state for the war department, to any judge of the Queen's Bench, Common Pleas, or Exchequer in England or Ireland, and thereupon such judge shall make an order for the penal servitude of such offender in conformity with such notification, and shall do all such other acts consequent upon such notification as such judge is authorized to do by any Act in force touching the penal servitude of other offenders; and it shall be lawful for any judge of the Queen's Bench, Common Pleas, or Exchequer in Ireland, to make an order that any such offender convicted in Ireland shall be kept in penal servitude in England; and such order shall be in all respects as effectual in England as though such offender had been convicted in England, and the order had been made by any judge of the Queen's Bench, Common Pleas, or Exchequer in England; and the person in whose custody such offender shall at that time be, and all other persons whatsoever whom the said order may concern, shall be bound to obey and shall be assistant in the execution thereof, and shall be liable to the same punishment for disobedience to or for interrupting the execution of such order as if the order had been made under the authority of any such Act as aforesaid; and every person so ordered to be kept in penal servitude shall be subject to every provision made by law and in force concerning persons under sentence of penal servitude; and from the time when such order of penal servitude shall be made every Act in force touching the escape of felons, or their afterwards returning or being at large without leave, shall apply to such offender, and to all persons aiding and abetting, contriving or assisting in any escape or intended escape or returning without leave of any such offender; and the judge who shall make any order of penal servitude as aforesaid shall direct the notification of her Majesty's pleasure, and his own order made thereupon, to be filed and kept of record in the office of the clerk of the crown of the Court of Queen's Bench; and the said clerk shall have a fee of 2s. 6d. only for filing the same, and shall, on application, deliver a certificate in writing (not taking more than 2s. 6d. for the same) to such offender or to any person applying in his or her Majesty's behalf, showing the Christian and surname of such offender, his offence, the place where the Court was held before which he was convicted, and the conditions on which the order of penal servitude was made; which certificate shall be sufficient proof of the conviction and sentence of such offender, and also of the terms on which such order for his penal servitude was made, in any Court and in any proceeding wherein it may be necessary to inquire into the same.

Apprehension of

Sect. 34. Upon reasonable suspicion that a person is a deserter it

(a) The first Act of this kind was occasioned by a mutiny in a body of English and Scotch troops upon their being ordered to Holland to replace

some of the Dutch troops which William III. had brought over with him, and intended to keep in England.

shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier in her Majesty's service, or other person, to apprehend or cause to be apprehended such suspected person, and forthwith to bring him or cause him to be brought before any justice living in or near the place where he was so apprehended and acting for the county, city, district, place, or borough wherein such place is situate, or for the county adjoining such first-mentioned county or such borough; and such justice is hereby authorized and required to inquire whether such suspected person is a deserter, and from time to time to defer the said inquiry and to remand the said suspected person in the manner prescribed by an Act passed in the eleventh and twelfth years of the reign of her present Majesty, chapter forty-two, section twenty-one, and subject to every provision therein contained; and if it shall appear to the satisfaction of such justice by the testimony of one or more witnesses, taken upon oath, or by the confession of such suspected person, confirmed by some corroborative evidence upon oath or by the knowledge of such justice, that such suspected person is a deserter, such justice shall forthwith cause him to be conveyed in civil custody to the head quarters or depot of the regiment or corps to which he belongs, if stationed within a convenient and easily accessible distance from the place of commitment, or if not so stationed then to the nearest or most convenient public prison (other than a military prison set apart under the authority of this Act) or police station legally provided as a lock-up house for temporary confinement of persons taken into custody, whether such prison or police station be in the county or borough in which such suspected person was apprehended or in which he was committed, or not; or if the deserter has been apprehended by a party of soldiers of his own regiment or corps in charge of a commissioned officer, such justice may deliver him up to such party, unless the officer shall deem it necessary to have the deserter committed to prison for safe custody; and such justice shall transmit an account of the proceedings, in the form prescribed in the schedule annexed to this Act, to the secretary of state for the war department, specifying therein whether such deserter was delivered to his regiment or corps, or to the party of his regiment or corps, in order to his being taken to the head quarters or depot of his regiment or corps, or whether such deserter was committed to prison, to the end that the person so committed may be removed by an order from the office of the said secretary of state, and proceeded against according to law; and such justice shall also send to the said secretary of state a report stating the names of the persons by whom or by or through whose means the deserter was apprehended and secured; and the said secretary of state shall transmit to such justice an order for the payment to such persons of such sum not exceeding 40s., as the said secretary of state shall be satisfied they are entitled to according to the true intent and meaning of this Act; and for such information, commitment, and report as aforesaid, the clerk of the said justice shall be entitled to a fee of 2s. and no more; and every gaoler and other person into whose custody any person charged with desertion is committed shall immediately, upon the receipt of the person so charged into his custody, pay such fee of 2s., and also upon the production of a receipt from the medical practitioner who, in the absence of a military medical officer, may have been required to examine such suspected person, a fee of 2s. 6d., and shall notify the fact to the secretary of state for the war department, and transmit also to the said secretary of state a copy of the commitment, to the end that such secretary of state may order repayment of such fees.

1. *The Regular Soldiers.*

deserters in the
United Kingdom.

Sect. 35. Every gaoler or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement in any part of her Majesty's dominions, is hereby required to receive and confine therein every deserter who shall be delivered into his custody by any

As to the temporary custody of deserters in gaols.

1. *The Regular Soldiers.*

soldier or other person conveying such deserter under lawful authority, on production of the warrant of the justice of the peace on which such deserter shall have been taken, or some order from the office of the secretary of state for the war department, which order shall continue in force until the deserter shall have arrived at his destination; and such gaoler or keeper shall be entitled to 1s. for the safe custody of the said deserter while halted on the march, and to such subsistence for his maintenance as shall be directed by her Majesty's regulations.

Desertion of recruits prior to joining their regiments or corps.

Sect. 36. Any recruit for her Majesty's army who, having been attested or received pay other than enlisting money, shall desert before joining the regiment or corps for which he has enlisted, shall, on being apprehended, and committed for such desertion by any justice of the peace upon the testimony of one or more witnesses upon oath, or upon his own confession, forfeit his personal bounty, and be liable to be transferred to any regiment or corps or depot nearest to the place where he shall have been apprehended, or to any other regiment or corps to which her Majesty may deem it more desirable that he should be transferred: Provided always, that such deserters thus transferred shall not be liable to other punishment for the offence, or to any other penalty except the forfeiture of their personal bounty.

Fraudulent confession of desertion.

Sect. 37. Any person who shall confess himself to be a deserter from her Majesty's forces, or from the embodied militia, shall be liable to be taken before any two justices of the peace acting for the county, district, city, burgh, or place where any such person shall at any time happen to be when he shall be brought before them, and on proof that any such confession as aforesaid was false shall by the said justices be adjudged to be punished, if in England as a rogue and vagabond, and if elsewhere by commitment to some prison or house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and if, when such person shall be brought before the said justices, it shall be proved to their satisfaction that such confession has been made, but evidence of the truth or falsehood of such confession shall not at that time be forthcoming, such justices within the United Kingdom are hereby required to remand such person in the manner hereinbefore mentioned, and to transmit a statement of the case and descriptive return to the secretary of state for the war department, with a request to be informed whether such person appears to belong or to have belonged to the regiment or corps from which he shall have so confessed himself to have deserted; and a letter from the war office in reply thereto, referring to such statement, and purporting to be signed by or on behalf of the secretary of state for the war department, shall be admissible in evidence against such person, and shall be deemed to be legal evidence of the facts stated therein, and on the receipt thereof the said justices shall forthwith proceed to adjudicate upon the case. In India the authority herein given to two justices may be exercised by one European justice or magistrate.

Furlough in case of sickness.

Sect. 38. When there shall not be any military officer of rank not inferior to captain, or any adjutant of regular militia, within convenient distance of the place where any non-commissioned officer or soldier on furlough shall be detained by sickness or other casualty rendering necessary any extension of such furlough, it shall be lawful for any justice who shall be satisfied of such necessity to grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of the corps or detachment to which such non-commissioned officer or soldier belongs, if known, and if not then to the agent of the regiment or corps, in order that the proper sum may be remitted to such non-commissioned officer or soldier, who shall not during the period of such extension of furlough be liable to be treated as

a deserter: Provided always, that nothing herein contained shall be construed to exempt any soldier from trial and punishment according to the provisions of this Act, for any false representation made by him in that behalf to the said justice, or for any breach of discipline committed by him in applying for and obtaining the said extension of furlough.

1. *The Regular Soldiers.*

Sect. 39. No person subject to this Act, having been acquitted or convicted of any crime or offence by the civil magistrate, or by the verdict of a jury, shall be liable to be again convicted for the same crime or offence by a court-martial, or to be punished for the same otherwise than by cashiering in the case of a commissioned officer, or in the case of a warrant officer by reduction to an inferior class or to the rank of a private soldier by order of the commander-in-chief, or in the case of a non-commissioned officer by reduction to the ranks by order of the commander-in-chief or of the colonel, or in the militia by order of the appointed commandant of the regiment or corps; and whenever any officer or soldier shall have been tried by any Court of ordinary criminal jurisdiction, the clerk of such Court or other officer having the custody of the records of such Court, or the deputy of such clerk, shall, if required by the officer commanding the regiment or corps to which such officer or soldier shall belong, transmit to him a certificate setting forth the offence of which the prisoner was convicted, together with the judgment of the Court thereon, if such officer or soldier shall have been convicted, or of the acquittal of such officer or soldier, and shall be allowed for such certificate a fee of three shillings.

No person acquitted or convicted by the civil magistrate or by a jury to be tried by a court-martial for the same offence.

Sect. 40. Any person attested for her Majesty's army, or serving on the permanent staff of the disembodied militia or volunteers other than as a commissioned officer, shall be liable to be taken out of her Majesty's service only by process or execution on account of any charge of felony or of misdemeanour, or of any crime or offence other than the misdemeanour of absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting the same, or the misdemeanour of refusing to comply with an order of justices for the payment of money, or on account of an original debt proved by affidavit of the plaintiff or of some one on his behalf to amount to the value of thirty pounds at the least, over and above all costs of suit, such affidavit to be sworn, without payment of any fee, before some judge of the Court out of which process or execution shall issue, or before some person authorized to take affidavits in such Court, of which affidavit, when duly filed in such Court, a memorandum shall, without fee, be endorsed upon the back of such process, stating the facts sworn to, and the day of filing such affidavit; but no soldier or other person as aforesaid shall be liable by any process whatever to appear before any justice of the peace or other authority whatever, or to be taken out of her Majesty's service by any writ, summons, warrant, order, judgment, execution, or any process whatsoever issued by or by the authority of any Court of law, or any magistrate, justice or justices of the peace, or any other authority whatsoever, for any original debt not amounting to thirty pounds, or for not supporting or maintaining, or for not having supported or maintained, or for leaving or having left chargeable to any parish, township, or place, or to the common fund of any union, any relation or child which such soldier or person might, if not in her Majesty's service, be compellable by law to relieve or maintain, or for neglecting to pay to the mother of any bastard child, or to any person who may have been appointed to have the custody of such child, any sum to be paid in pursuance of an order on that behalf, or for the breach of any contract, covenant, agreement, or other engagement whatever by parol or in writing, or for having left or deserted his employer or master, or his contract, work, or labour, or misconducting himself respecting the same, except in the case of an apprentice, or of an indentured labourer, as hereinafter described;

Soldiers liable to be taken out of her Majesty's service only for felony, misdemeanour, or for debts amounting to £30 and upwards.

Soldiers not liable to be taken out of her Majesty's service for debts under £30, or for not maintaining their families, or for breach of contract.

1. The Regular Soldiers.

and all summonses, warrants, commitments, indictments, convictions, judgments, and sentences on account of any of the matters for which it is herein declared that a soldier or other person as aforesaid is not liable to be taken out of her Majesty's service, shall be utterly illegal, and null and void, to all intents and purposes; and any judge of any such Court may examine into any complaint made by a soldier or by his superior officer, and by warrant under his hand discharge such soldier, without fee, he being shown to have been arrested contrary to the intent of this Act, and shall award reasonable costs to such complainant, who shall have for the recovery thereof the like remedy as would have been applicable to the recovery of any costs which might have been awarded against the complainant in any judgment or execution as aforesaid, or a writ of *habeas corpus ad subjiciendum* shall be awarded or issued, and the discharge of any such soldier out of custody shall be ordered thereupon; provided that any plaintiff, upon notice of the cause of action first given in writing to any soldier, or left at his last quarters, may proceed in any action or suit to judgment, and have execution other than against the body or military necessities or equipments of such soldier; provided also, that nothing herein contained relating to the leaving or deserting a master or employer, or to the breach of any contract, agreement, or engagement, shall apply to persons who shall be really and *bonâ fide* apprentices, duly bound, under the age of twenty-one years, or to indentured labourers, as hereinafter prescribed.

Officers not to be sheriffs or mayors, etc.

Sect. 41. No person who shall be commissioned and in full pay as an officer shall be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor, portreeve, alderman, or to hold any office in any municipal corporation in any city, borough, or place in Great Britain or Ireland.

Questions to be put to recruits on enlisting.

Sect. 42. Every person authorized to enlist recruits shall first ask the person offering to enlist whether he belongs to the militia, and also such other questions as the military authorities may direct to be put to recruits (*a*), and shall immediately after giving him enlisting money serve him with a notice in the form set forth in the schedule to this Act annexed.

Recruits, when deemed to be enlisted (*b*).

Sect. 43. Every person who shall receive enlisting money in manner aforesaid, knowing it to be such, shall, subject to the provisions herein-after contained, upon such receipt be deemed to be enlisted as a soldier in her Majesty's service, and while he shall remain with the recruiting party shall be entitled to be billeted.

When recruits to be taken before a justice (*c*).

Sect. 44. Every person so enlisted as aforesaid shall, within ninety-six hours (any intervening Sunday, Christmas Day, or Good Friday not included) but not sooner than twenty-four hours after such enlistment, appear, together with some person employed in the recruiting service, before a justice of the peace, not being an officer of the army, for the purpose of being attested as a soldier, or of objecting to his enlistment.

Dissent and relief from enlistment.

Sect. 45. When a recruit upon appearing before a justice for the purposes aforesaid shall dissent from or object to his enlistment, and shall satisfy the justice that the same was effected in any respect irregularly, he shall forthwith discharge the recruit absolutely, and shall report such

(*a*) This enactment is directory only, and the failure to put the question will not prevent the recruit from being deemed to be a soldier within the meaning of sect. 2. (*Wolton v. Gavin*, 16 Q. B. 48; 20 L. J., Q. B., 73.)

(*b*) An enlistment on a Sunday is

not void under the 29 Car. 2, c. 7. (*Ib.*)

(*c*) A person who acts as a duly attested soldier after the expiration of the four days within which he ought to have been attested is to be presumed to have been duly attested. (*Ib.*)

discharge to the inspecting field officer of the district, or in the case of a recruit enlisted at the head quarters or dépôt of a regiment to the officer commanding the same : but if the recruit so dissenting shall not allege or shall not satisfy the justice that the enlistment was effected irregularly, nevertheless, upon repayment of the enlisting money, and of any sum received by him in respect of pay, and of a further sum of 20s. as smart money, he will be entitled to be discharged, and the sum paid by such recruit upon his discharge shall be kept by the justice, and, after deducting therefrom 1s. as the fee for reporting the payment to the secretary of state for the war department and to the inspecting field officer of the district, shall be paid over to any person belonging to the recruiting party who may demand the same ; and the justice who shall discharge any recruit shall in every case give a certificate thereof, signed with his hand, to the recruit, specifying the cause thereof.

1. *The Regular Soldiers.*

Sect. 46. Any person may be enlisted for some particular arm or branch of service, and if he shall enlist for cavalry or infantry he shall be at liberty to declare and state the particular regiment of cavalry or infantry into which he desires to enlist, and he shall be attested for the same, and be sent thereto with all convenient speed ; but if no such statement or declaration be made by such person at the time of his attestation as aforesaid, then he shall be attested for general service, and it shall be lawful for the military authorities at any time within twelve months after his attestation to attach him to such arm or branch of service, or to such regiment of cavalry or infantry, excluding colonial corps, as to them shall seem to be most fitting and convenient for her Majesty's service : Provided always, that after the recruit shall have been attached to any regiment he shall not be removed or transferred therefrom, save and except under the provisions of any statute for the time being in force.

Enlistment for particular branch or arm of or for general service.

If the recruit on appearing before a justice shall not dissent from his enlistment, or dissenting shall within twenty-four hours return and state that he is unable to pay the sums mentioned in the last section, he shall be attested as follows : the justice, or some person deputed by him, shall read to the recruit the questions set forth in the form contained in the schedule to this Act annexed, cautioning him that if he fraudulently make any false answer thereto he shall be liable to be punished as a rogue and a vagabond ; and the answers of the recruit shall be recorded opposite to the said questions, and the justice shall require the recruit to make and sign the declaration in the said form, and shall then administer to him the oath of allegiance in the said form ; and when the recruit shall have signed the said declaration, and taken the said oath, the justice shall attest the same by his signature, and shall deliver to the recruiting officer the declaration so signed and attested ; and the fee for such attestation, including the declaration and oath, shall be one shilling and no more ; and any recruit shall, if he so wish, be furnished with a certified copy of the above-mentioned declaration by the officer who finally approved of him for the service.

Attesting of recruits.

Sect. 47. No recruit, unless he shall have been attested or shall have received pay other than enlisting money, shall be liable to be tried by court-martial ; but if any recruit previously to his being attested shall by means of any false answer obtain enlistment money, or shall make any false statement in his declaration, or shall refuse to answer any question duly authorized to be put to recruits for the purpose of filling up such declaration, or shall refuse or neglect to go before a justice for the purposes aforesaid, or having dissented from his enlistment shall wilfully omit to return and pay such money as aforesaid, in any of such cases it shall be lawful for any two justices within the United Kingdom, or for any one justice out of the United Kingdom, acting for the county, district, city, burgh, or place where any such recruit shall at any time

Recruits, until they have been attested or received pay, not triable by court-martial, but in certain cases punishable as rogues and vagabonds.

1. *The Regular Soldiers.*

happen to be, to adjudge such recruit, when he shall be brought before them or him if in England, to be a rogue and vagabond, and to sentence him to be punished accordingly, and if in Scotland or Ireland, or elsewhere in her Majesty's dominions, to be imprisoned with hard labour in any prison or house of correction for any period not exceeding three calendar months; and the declaration made by the recruit on his attestation purporting to be made and subscribed in accordance with the schedule to this Act annexed shall, in the absence of proof to the contrary, be deemed sufficient evidence of such recruit having represented the several particulars as stated in such declaration.

Attested recruits triable in some cases either before two justices or before a court-martial.

Sect. 48. Any recruit who shall have been attested, and who shall afterwards be discovered to have given any wilfully false answer to any question directed to be put to recruits, or shall have made any wilfully false statement in the declaration hereinbefore mentioned, shall be liable, at the discretion of the proper military authorities, to be proceeded against before two justices in the manner hereinbefore mentioned, and by them sentenced accordingly, or to be tried by a district or garrison court-martial for the same, and punished in such manner as such Court shall direct.

Recruits absconding.

Sect. 49. If any recruit shall abscond, so that it is not possible immediately to apprehend and bring him before a justice for attestation, the recruiting party shall produce to the justice before whom the recruit ought regularly to have been brought for that purpose a certificate of the name and place of residence and description of such recruit, and of his having absconded, and shall declare the same to be true; and the justice to whom such certificate shall be produced shall transmit a duplicate thereof to the secretary of state for the war department, in order that the same may appear in the *Police Gazette*.

Re-engagement of soldiers for a further term.

Sect. 55. Any person who now has or may hereafter have completed at least two-thirds of the first term of his enlistment may at any time thereafter, with the approbation of his commanding officer, or other competent military authority, be re-engaged for such a period as shall complete a total period of twenty-one years in her Majesty's service; and any person who has been a soldier, and who has received his discharge, may also be so re-engaged upon making a declaration, in the form given in the schedule annexed to this Act, before any one of her Majesty's justices of the peace in Great Britain or Ireland, or if not in Great Britain or Ireland before any person duly appointed to enlist and attest out of Great Britain and Ireland any soldiers or persons desirous of enlisting or re-engaging in her Majesty's service: Provided always, that in reckoning service under the original enlistment or re-engagement of a soldier the boon service granted by the general order of the Governor General of India, dated 12th October, 1859, shall be reckoned as actual service, and allowed towards pension and discharge: Provided also, that every soldier now serving who belonged to the garrison which defended Lucknow, or to the garrison which defended the Alumbagh, before the advance of any portion of the forces under the late Lord *Clyde* in 1857, shall be allowed to reckon one year's service towards the performance of his limited engagement, and also towards pension on discharge: Provided also, that every soldier who volunteered into her Majesty's army from any embodied regiment of militia between the 31st December, 1855, and the 21st March, 1861, inclusive, or from the disembodied militia during the last week of the training of his regiment in the year 1858, and who had rendered previous to volunteering six months embodied or disembodied militia service, shall be allowed to reckon towards good conduct pay and pension, and towards the completion of his limited engagement of service in her Majesty's army, half the embodied service which he had rendered in the militia after attaining the age of eighteen.

Boon service to be reckoned.

Sect. 57. Any person duly bound as an apprentice in Great Britain or Ireland, or as an indentured labourer in any of her Majesty's colonies or possessions abroad, who shall enlist as a soldier in her Majesty's army, and shall falsely state to the magistrate before whom he shall be carried and attested that he is not an apprentice or indentured labourer as aforesaid, shall be deemed guilty of obtaining money under false pretences, if in England or in Ireland, or in the colonies or possessions aforesaid, and of falsehood, fraud, and wilful imposition, if in Scotland, and shall after the expiration of his apprenticeship or of his indenture as a labourer, whether he shall have been so convicted and punished or not, be liable to serve as a soldier in her Majesty's army according to the terms of the enlistment, and if on the expiration of his apprenticeship, or of his indenture as a labourer, he shall not deliver himself up to some officer authorized to receive recruits, such person may be taken as a deserter from her Majesty's army; and no master shall be entitled to claim an apprentice or an indentured labourer as aforesaid who shall enlist as a soldier in her Majesty's army, or shall be serving in the embodied militia, unless he shall, within one calendar month after such apprentice or indentured labourer shall have left his service, go before some justice, and take the oath mentioned in the schedule to this Act annexed, and shall produce the certificate of such justice of his having taken such oath, which certificate such justice is required to give in the form in the schedule to this Act annexed, and unless such apprentice shall have been bound, if in England, for the full term of five years, not having been above the age of fourteen when so bound, and, if in Ireland or in the British Isles, for the full term of five years at the least, not having been above the age of sixteen when so bound, and, if in Scotland, for the full term at least of four years, by a regular contract or indenture of apprenticeship, duly extended, signed, and tested, and binding on both parties by the law of Scotland, prior to the period of enlistment, and unless such contract or indenture in Scotland shall, within three months after the commencement of the apprenticeship, and before the period of enlistment, have been produced to a justice of the peace of the county in Scotland wherein the parties reside, and there shall have been endorsed thereon by such justice a certificate or declaration signed by him specifying the date when and the person by whom such contract or indenture was so produced, which certificate or declaration such justice of the peace is hereby required to endorse and sign, and unless such apprentice shall, when claimed by such master, be under twenty-one years of age: Provided always, that any master of an apprentice indentured for the sea service, or of any indentured labourer in her Majesty's colonies or possessions abroad, shall be entitled to claim and recover him in the form and manner above directed, notwithstanding such apprentice or indentured labourer may have been bound for a less term than five or four years as aforesaid: Provided also, that any master who shall give up the indentures of his apprentice or of his labourer as aforesaid within one month after the enlisting of such apprentice or indentured labourer shall be entitled to receive to his own use so much of the bounty payable to such recruit as shall not have been paid to such recruit before notice given of his being an apprentice or an indentured labourer.

1. *The Regular Soldiers.*

Apprentice enlisting to be liable to serve after the expiration of his apprenticeship.

Claims of masters to apprentices.

Sect. 58. No apprentice or indentured labourer claimed by his master as aforesaid shall be taken from any corps or recruiting party, except under a warrant of a justice residing near, and within whose jurisdiction such apprentice or indentured labourer shall then happen to be, before whom he shall be carried; and such justice shall inquire into the matter upon oath, which oath he is hereby empowered to administer, and shall require the production and proof of the indenture, and that notice of the said warrant has been given to the commanding officer, and a copy thereof left with some officer or non-commissioned officer of the party,

Punishment of apprentices enlisting.

1. *The Regular Soldiers.*

and that such person so enlisted declared that he was no apprentice or indentured labourer; and such justice, if required by such officer or non-commissioned officer, shall commit the offender to the common gaol of the county, division, or place for which such justice is acting, and shall keep the indenture to be produced when required, and shall bind over such person as he may think proper to give evidence against the offender, who shall be tried at the next or at the sessions immediately succeeding the next general or quarter sessions of such county, division, or place, unless the Court shall for just cause put off the trial; and the production of the indenture, with the certificate of the justice that the same was proved, shall be sufficient evidence of the said indenture; and every such offender in Scotland may be tried by the judge ordinary in the county or stewartry in such and the like manner as any person may be tried in Scotland for any offence not inferring a capital punishment: Provided always, that any justice not required as aforesaid to commit such apprentice or indentured labourer may deliver him to his master.

How and where troops may be billeted.

Sect. 63. It shall be lawful for all constables of parishes and places, and other persons specified in this Act, in Great Britain and Ireland, and they are hereby required, to billet the officers and soldiers in her Majesty's service, and out-pensioners when assembled as a local force by competent authority, and persons receiving pay in her Majesty's army, and the horses belonging to her Majesty's cavalry, and also all staff and field officers' horses, and all bāt and baggage horses belonging to any of her Majesty's other forces, when on actual service, not exceeding for each officer the number for which forage is or shall be allowed by her Majesty's regulations, in victualling houses and other houses specified in this Act (taking care in Ireland not to billet less than two men in one house, except only in case of billeting cavalry as especially provided); and they shall be received by the occupiers of the houses in which they are so billeted, and be furnished by such victuallers with proper accommodation in such houses, or if any victualler shall not have sufficient accommodation in the house upon which a soldier is billeted, then in some good and sufficient quarters to be provided by such victualler in the immediate neighbourhood, and in Great Britain shall also be furnished with diet and small beer, and in Great Britain and Ireland with stables, oats, hay, and straw for such horses as aforesaid, paying and allowing for the same the several rates hereinafter provided; and at no time when troops are on a march shall any of them, whether infantry or cavalry, be billeted above one mile from the place mentioned in the route, care being always taken that billets be made out for the less distant houses, in which suitable accommodation can be found, before making out billets for the more distant; and in all places where cavalry shall be billeted in pursuance of this Act, each man and his horse shall be billeted in one and the same house, except in case of necessity; and, except in case of necessity, one man at least shall be billeted where there shall be one or two horses, and two men at least where there shall be four horses, and so in proportion for a greater number; and in no case shall a man and his horse be billeted at a greater distance from each other than one hundred yards; and the constables are hereby required to billet all soldiers and their horses on their march, in the manner required by this Act, upon the occupiers of all houses within one mile of the place mentioned in the route, and whether they be in the same or in a different county, in like manner in every respect as if such houses were all locally situate within such place; provided that nothing herein contained shall be construed to extend to authorize any constable to billet soldiers out of the county to which such constable belongs when the constable of the adjoining county shall be present and shall undertake to billet the due proportion of men in such adjoining county; and no more billets shall at any time be ordered than there are effective

soldiers and horses present to be billeted; all which billets, when made out by such constables, shall be delivered into the hands of the commanding officer present; and if any person shall find himself aggrieved by having an undue proportion of soldiers billeted in his house, and shall prefer his complaint, if against a constable or other person not being a justice, to one or more justices, and if against a justice then to two or more justices within whose jurisdiction such soldiers are billeted, such justices respectively shall have power to order such of the soldiers to be removed, and to be billeted upon other persons, as they shall see cause; and when any of her Majesty's cavalry or any horses as aforesaid shall be billeted upon the occupiers of houses in which officers or soldiers may be quartered by virtue of this Act who shall have no stables, then and in such case, upon the written requisition of the commanding officer of the regiment, corps, troop, or detachment, the constable is hereby required to billet the men and their horses, or horses only, upon some other person or persons who have stables, and who are by this Act liable to have officers and soldiers billeted upon them; and upon complaint being made by the person or persons to whose house or stables the said men or horses shall have been so removed to two or more justices within whose jurisdiction such men or horses shall be so billeted, it shall be lawful for such justices to order a proper allowance to be paid by the person relieved to the persons receiving such men and horses, or to be applied in furnishing the requisite accommodation; and commanding officers may exchange any man or horse billeted in any place with another man or horse billeted in the same place for the benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses respectively; and the constables are hereby required to billet such men and horses so exchanged accordingly; and it shall be lawful for any justice, at the request of any officer or non-commissioned officer commanding any soldiers requiring billets, to extend any routes or to enlarge the districts within which billets shall be required, in such manner as shall appear to be most convenient to the troops; provided that to prevent or punish all abuses in billeting soldiers, it shall be lawful for any justice within his jurisdiction, by warrant or order under his hand, to require any constable to give him an account in writing of the number of officers and soldiers who shall be quartered by such constables, together with the names of the persons upon whom such officers and soldiers are billeted, stating the street or place where such persons dwell, and the sign, if any, belonging to the houses: Provided always, that no officer shall be compelled or compellable to pay anything for his lodging where he shall be duly billeted.

Sect. 64. The officers and soldiers of her Majesty's Foot Guards shall be billeted within the city and liberties of Westminster and places adjacent, lying in the county of Middlesex (except the city of London) and in the county of Surrey, and in the borough of Southwark, in the same manner and under the same regulations as in other parts of England, in all cases for which particular provision is not made by this Act; and the high constables shall, on receipt of the order for billeting soldiers, deliver precepts to the several constables within their respective divisions, in pursuance of which the said constables shall billet such officers and soldiers equally and proportionably on the houses subjected thereto by this Act; and the said constables shall, at every general sessions of the peace to be holden for the said city and liberties, counties and borough respectively, make and deliver to the justices then in open session assembled, upon oath, which oath the said justices are hereby required to administer, lists, signed by them respectively, of the houses subject by this Act to receive officers and soldiers together with the names and rank of all officers and soldiers billeted on each respectively, which lists shall remain with the respective clerks of the peace for the inspection of all persons without fee or reward; and such clerk shall forthwith from

1. The Regular Soldiers.

Billeting the guards in and near Westminster.

1. *The Regular Soldiers.*

Military officers not to act as justices in billeting.

Allowance to innkeepers.

time to time deliver to any persons who shall require the same true copies of any such lists upon being paid twopence per sheet for the same, each sheet to contain at the least one hundred and fifty words.

Sect. 65. No justice having or executing any military office or commission in any part of the United Kingdom shall, directly or indirectly, be concerned in the billeting or appointing quarters for any soldier in the regiment, corps, troop, or company under the immediate command of such justice, and all warrants, acts, and things made, done, and appointed by such justice for or concerning the same shall be void.

Sect. 66. The innholder or other person on whom any soldier is billeted in Great Britain shall, if required by such soldier, furnish him for every day of the march, and for a period not exceeding two days when halted at the intermediate place upon the march, and for the day of the arrival at the place of final destination, with one hot meal in each day, the meal to consist of such quantities of diet and small beer, as may be fixed by her Majesty's regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper, and for such meal the innholder or other person furnishing the same shall be paid the sum of tenpence, and twopence halfpenny for a bed; and all innholders and other persons on whom soldiers may be billeted in Great Britain or Ireland, except when on the march in Great Britain and entitled to be furnished with the hot meal as aforesaid, shall furnish such soldiers with a bed and with candles, vinegar, and salt, and shall allow them the use of fire, and the necessary utensils for dressing and eating their meat, and shall be paid in consideration thereof the sum of fourpence per diem for each soldier; and the sum to be paid to the innholder or other person on whom any of the horses belonging to her Majesty's forces shall be billeted in Great Britain or Ireland for ten pounds of oats, twelve pounds of hay, and eight pounds of straw, shall be one shilling and ninepence per diem for each horse; and every officer or non-commissioned officer commanding a regiment, detachment, or party shall, every four days, or before they shall quit their quarters if they shall not remain so long as four days, settle and discharge the just demands of all victuallers or other persons upon whom such officers, soldiers, or horses are billeted, out of the pay and subsistence of such officers and soldiers, before any part of the said pay or subsistence be distributed to them respectively; and if any such officer or non-commissioned officer shall not pay the same as aforesaid, then, upon complaint, and oath made thereof by any two witnesses before two justices of the peace for the county, riding, division, liberty, city, borough, or place where such quarters were situated, sitting in quarter or petty sessions, the secretary of state for the war department is hereby required (upon certificate of the justices before whom such oath was made of the sum due upon such accounts, and the persons to whom the same is owing), to give orders to the agent of the regiment or corps to pay the sums due to such victuallers or other persons as aforesaid, and to charge the same against such officers; and in case any soldier be suddenly ordered to march, and the respective commanding officers or non-commissioned officers are not enabled to make payment of the sums due for the lodging or victualling of the men and stabling or forage for the horses, every such officer or non-commissioned officer shall, before his departure, make up the account with every person upon whom such soldier may have been billeted, and sign a certificate thereof; which account and certificate shall be transmitted by such officer or non-commissioned officer to the agent of the regiment or corps, who is hereby required to make immediate payment thereof, and to charge the same to the account of such officer or non-commissioned officer.

Interpretation of Act.

Sect. 67. All powers and provisions relating to soldiers shall be con-

strued to extend to non-commissioned officers, unless when otherwise provided; and all powers and provisions relating to justices shall be construed to extend to all magistrates authorized to act as such in their respective jurisdictions and to chief magistrates of exclusive local jurisdictions; and all the powers given to and regulations made for the conduct of constables in relation to the billeting of officers and soldiers, and all penalties and forfeitures for any neglect thereof, shall extend to all tithingmen, headboroughs, and such like officers, and to all inspectors or other officers of police, and to high constables and other chief officers and magistrates of cities, towns, villages, hamlets, parishes, and places in England and Ireland, and to all justices of the peace, magistrates of burghs, commissioners of police, and other chief officers and magistrates of cities, towns, villages, parishes, and places in Scotland, who shall act in the execution of this Act in relation to billeting; and all powers and provisions for billeting officers and soldiers in victualling houses shall extend and apply to all inns, hotels, livery stables, alehouses, and to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses, or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or me-theglin, by retail, in Great Britain and Ireland; and in Ireland, when there shall not be found sufficient room in such houses, then to billeting soldiers in such manner as has been heretofore customary: Provided that no officer or soldier shall be billeted in Great Britain in any private houses, or in any canteen held or occupied under the authority of the war department, or upon persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding such persons who keep such taverns only have taken out victualling licences, nor in the house of any distiller kept for distilling brandy and strong waters, nor in the house of any shopkeeper whose principal dealing shall be more in other goods and merchandise than in brandy and strong waters, so as such distillers and shopkeepers do not permit tipping in such houses, nor in the house of residence in any part of the United Kingdom of any foreign consul duly accredited as such.

1. *The Regular Soldiers.*

Powers and regulations as to billets.

Exemptions from billets.

Sect. 68. For the regular provision of carriages for her Majesty's forces, and their baggage, in their marches in Great Britain and Ireland, all justices of the peace within their several jurisdictions, being duly required thereunto by an order from her Majesty, or the general of her forces, or other person duly authorized in that behalf, shall, on production to them of such order, or a copy thereof, certified by the commanding officer, by some officer or non-commissioned officer of the regiment or corps so ordered to march, issue a warrant to any constable having authority to act in any place from, through, near, or to which the troop shall be ordered to march (for each of which warrants the fee of 1s. only shall be paid), requiring him to provide the carriages, horses, and oxen, and drivers therein-mentioned, and allowing sufficient time to do the same, specifying the places from and to which the said carriages shall travel, and the distance between the places, for which distance only so specified payment shall be demanded, and which distance shall not, except in cases of pressing emergency, exceed a day's march prescribed in the order of route, and shall in no cases exceed twenty-five miles; and the constables receiving such warrants shall order such persons as they shall think proper, having carriages, to furnish the requisite supply, who are hereby required to furnish the same accordingly; and when sufficient carriages cannot be procured within the proper jurisdiction, any justice of the next adjoining jurisdiction shall, by a like course of proceeding, supply the deficiency; and in order that the burden of providing carriages may fall equally, and to prevent inconvenience arising from there being no justice near the place where troops may be quartered on the march, any justice residing nearest to such place may cause a list to

Supply of carriages.

* *Sic.*

1. *The Regular Soldiers.*

be made out once in every year of all persons liable to furnish such carriages, and of the number and description of their said carriages (which list shall at all seasonable hours be open to the inspection of the said persons), and may by warrant under his hand authorize the constable within his jurisdiction to give orders to provide carriages, without any special warrant for that purpose, which orders shall be valid in all respects; and all orders for such carriages shall be made from such lists in regular rotation, as far as the same can be done.

Rates to be paid
for carriages,
and regulations
relating thereto.

Sect. 69. In every case in which the whole distance for which any carriage shall be impressed shall be under one mile, the rate of a full mile shall be paid; and the rates to be paid for carriages impressed shall be, in Great Britain, for every mile which a waggon with four or more horses, or a wain with six oxen or four oxen and two horses, shall travel, 1s.; and for every mile any waggon with narrow wheels, or any cart with four horses, carrying not less than fifteen hundredweight, shall travel, 9d.; and for every mile any other cart or carriage with less than four horses, and not carrying fifteen hundredweight, shall travel, 6d.; and in Ireland, for every hundredweight loaded on any wheel carriage, $\frac{1}{2}$ d. per mile; and in Great Britain such further rates may be added, not exceeding a total addition per mile of 4d., 3d., or 2d., to the respective rates of 1s., 9d., or 6d., as may seem reasonable to the justices assembled at general sessions for their respective districts, or to the recorder at the sessions of the peace of any municipal city, borough, or town; and the order of such justices or recorder shall specify the average price of hay and oats at the nearest market town at the time of fixing such additional rates, the period for which the order shall be enforced not exceeding ten days beyond the next general sessions; and no such order shall be valid unless a copy thereof, signed by the presiding magistrate and one other justice, or by the recorder, shall be transmitted to the secretary of state for the war department within three days after the making thereof; and also in Great Britain when the day's march shall exceed fifteen miles, the justice granting his warrant may fix a further reasonable compensation, not exceeding the usual rate of hire fixed by this Act; and when any additional rates or compensation shall be granted, the justice shall insert in his own hand in the warrant the amount thereof, and the date of the order of sessions, if fixed by sessions, and the warrant shall be given to the officer commanding as his voucher; and the officer or non-commissioned officer demanding carriages by virtue of the warrant of a justice shall, in Great Britain, pay the proper sums into the hands of the constables providing carriages, who shall give receipts for the same on unstamped paper; and in Ireland the officers or non-commissioned officers as aforesaid shall pay the proper sums to the owners or drivers of the carriages, and one third part of such payment shall be made before the carriage be loaded, and all the said payments in Ireland shall be made, if required, in the presence of a justice or constable; and no carriage shall be liable to carry more than thirty hundredweight in Great Britain, and in Ireland no car shall be liable to carry more than six hundredweight, and no dray more than twelve hundredweight; but the owner of such carriages in Ireland consenting to carry a greater weight shall be paid at the same rate for every hundredweight of the said excess; and the owners of such carriages in Ireland shall not be compelled to proceed, though with any less weight, under the sum of 3d. a mile for each car and 6d. a mile for each dray; and the loading of such carriages in Ireland shall be first weighed, if required, at the expense of the owner of the carriage, if the same can be done in a reasonable time, without hindrance to her Majesty's service; provided that a cart with one or more horses, for which the furnisher shall receive 9d. a mile, shall be required to carry fifteen hundredweight at the least; and no penalties or forfeitures in any Act relating to highways or turnpike roads in the United Kingdom shall

apply to the number of horses and oxen, or weight of loading of the aforesaid carriages, which shall not on that account be stopped or detained; and whenever it shall be necessary to impress carriages for the march of soldiers from Dublin, at least twenty-four hours' notice of such march, and in case of emergency as long notice as the case will admit, shall be given to the lord mayor of Dublin, who shall summon a proportional number of cars and drays, at his discretion, out of the licensed cars and drays and other cars and drays within the county of the said city, and they shall by turns be employed on this duty at the prices and under the regulations hereinbefore mentioned; and no country cars, drays, or other carriages coming to markets in Ireland shall be detained or employed against the will of the owners in carrying the baggage of the army on any pretence whatsoever.

1. *The Regular Soldiers.*

Sect. 70. It shall be lawful for her Majesty, or for the lord lieutenant or chief governor of Ireland, by her or their order, distinctly stating that a case of emergency doth exist, signified by the secretary of state for the war department, or, if in Ireland, by the chief secretary or under secretary, or the first clerk in the military department, to authorize any general or field officer commanding her Majesty's forces in any district or place, or the chief acting agent for the supply of stores and provisions, by writing under his hand reciting such order of her Majesty or lord lieutenant or chief governor aforesaid, to require all justices within their several jurisdictions in Great Britain and Ireland, to issue their warrants for the provision, not only of waggons, wains, carts, and cars, kept by or belonging to any person and for any use whatsoever, but also of saddle horses, coaches, postchaises, chaises, and other four-wheeled carriages, kept for hire, and of all horses kept to draw carriages licensed to carry passengers, and also of boats, barges, and other vessels used for the transport of any commodities whatsoever upon any canal or navigable river, as shall be mentioned in the said warrants, therein specifying the place and distance to which such carriages or vessels shall go; and on the production of such requisition, or a copy thereof certified by the commanding officer, to such justice, by any officer of the corps ordered to be conveyed, or by any officer of the war department, such justice shall take all the same proceedings in regard to such additional supply so required on such emergency as he is by this Act required to take for the ordinary provision of carriages; and all provisions whatsoever of this Act as regards the procuring of the ordinary supply of carriages, and the duties of officers and non-commissioned officers, justices, constables, and owners of carriages in that behalf, shall be to all intents and purposes applicable for the providing and payment, according to the rates of posting or of hire usually paid for such other description of carriages or vessels so required on emergency, according to the length of the journey or voyage in each case, but making no allowance for post horse duty, or turnpike, canal, river, or lock-tolls, which duty or tolls are hereby declared not to be demandable for such carriages and vessels while employed in such service or returning therefrom; and it shall be lawful to convey thereon, not only the baggage, provisions, and military stores of such regiment, corps, or detachment, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same.

As to supply of carriages in cases of emergency, etc.

Sect. 71. It shall be lawful for the justices of the peace assembled at their quarter sessions to direct the treasurer to pay, without fee, out of the public stock of the county or riding, or if such public stock be insufficient, then out of moneys which the said justices shall have power to raise for that purpose, in like manner as for county gaols and bridges, such reasonable sums as shall have been expended by the constables within their respective jurisdictions for carriages and vessels, over and above what was or ought to have been paid by the officer requiring the same, regard being had to the season of the year and the condition of

Justices empowered to reimburse constables for sums expended by them.

1. *The Regular Soldiers.*

the ways by which such carriages and vessels are to pass; and in Scotland such justices shall direct such payments to be made out of the rogue money and assessments directed and authorized to be assessed and levied by an Act of the twentieth and twenty-first years of the reign of her present Majesty, chapter seventy-two.

Routes in Ireland.

Sect. 72. It shall be lawful for the lord lieutenant or other chief governor for the time being of Ireland to depute, by warrant under his hand and seal, some proper person to sign routes in cases of emergency, for the marching of any of her Majesty's forces in Ireland, in the name of such lord lieutenant or chief governor.

Tolls.

Sect. 73. All her Majesty's officers and soldiers, on duty or on their march, and their horses and baggage, and all recruits marching by route, and all prisoners under military escort, and all enrolled pensioners in uniform when called out for training or in aid of the civil power, and all carriages and horses belonging to her Majesty or employed in her service under the provisions of this Act, or in any of her Majesty's colonies, when conveying any such persons as aforesaid, or their baggage, or returning from conveying the same, shall be exempted from payment of any duties and tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or in passing along or over any turnpike or other roads or bridges (*a*), otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any Act or ordinance, order, or direction of any colonial Legislature or other authority in any of her Majesty's colonies; provided that nothing herein contained shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores, along any canal from payment of tolls in like manner as other boats, barges, and vessels, are liable thereto, except when employed in cases of emergency as herein-before enacted.

Ordinary course of criminal justice not to be interfered with.

Sect. 76. Nothing in this Act contained shall be construed to extend to exempt any officer or soldier from being proceeded against by the ordinary course of law, when accused of felony, or of misdemeanour, or of any crime or offence other than the misdemeanours and offences herein-before mentioned; and if any commanding officer shall neglect or refuse, on application being made to him for that purpose, to deliver over to the civil magistrate any officer or soldier under his command, or shall wilfully obstruct, neglect, or refuse to assist the officers of justice in apprehending any officer or soldier under his command, so accused as aforesaid, such commanding officer shall, upon conviction thereof in any of her Majesty's superior Courts at Westminster, Dublin, or Edinburgh, or in any Court of Record in India, be deemed to be thereupon cashiered, and shall be thenceforth utterly disabled to have or hold any civil or military office or employment in the United Kingdom of Great Britain and Ireland or in her Majesty's service; and a certificate of such conviction, containing the substance and effect of the indictment only, omitting the formal part, with the copy of the entry of the judgment of the Court thereon, shall be transmitted to the judge advocate general in London.

Penalty for procuring false musters.

Sect. 79. Every person, not having any military commission, who shall give or procure to be given any untrue certificate, whereby to excuse any soldier for his absence from any muster or any other service

(*a*) This section does not apply to a floating bridge kept in its proper place by means of parallel chains laid across the bed of the river, and pro-

pelled from one side of the river to the other by steam power. (*Ward v. Gray*, 34 L. J., M. C. 146.)

which he ought to attend or perform, or who shall directly or indirectly cause to be taken any money or gratuity for mustering any soldiers, or for signing any muster rolls or duplicates thereof, shall forfeit for every such offence the sum of £50; and any person who shall falsely be mustered, or offer himself to be mustered, or lend or furnish any horse to be falsely mustered, shall, upon conviction before some justice of the peace residing near the place where such muster shall be made, forfeit for every such offence the sum of £20; and the informer, if he belongs to her Majesty's service, shall, if he demand it, be forthwith discharged.

1. *The Regular Soldiers.*

Sect. 80. Every person (except such person or persons as shall be authorized by beating order under the hand of the secretary of state for the war department) who shall cause to be advertised, posted, or dispersed bills for the purpose of procuring recruits or substitutes for the line, embodied militia, or her Majesty's Indian forces, or shall open or keep any house, place of rendezvous, or office, or receive any person therein under such bill or advertisement, as connected with the recruiting service, or shall directly or indirectly interfere therewith, without permission in writing from the adjutant-general, or from the secretary of state in council of India (as the case may be), shall forfeit for every such offence a sum not exceeding £20.

Penalty on unlawful recruiting.

Sect. 81. Any person who shall in any part of her Majesty's dominions, or by any means whatsoever, directly or indirectly, procure any soldier to desert, or attempt to procure or persuade any soldier to desert, and any person who, knowing that any soldier is about to desert, shall aid or assist him in deserting, or, knowing any soldier to be a deserter, shall conceal such deserter, or aid or assist such deserter in concealing himself, or aid or assist in his rescue, shall be deemed guilty of a misdemeanour, and shall, on conviction thereof before any two justices acting for the county, district, city, burgh, or place where any such offender shall at any time happen to be, be liable to be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for such term not exceeding six calendar months as the convicting justices shall think fit.

Penalty for inducing soldiers to desert.

Sect. 82. Any officer or soldier who shall, in pursuit of any deserter, forcibly enter into or break open any dwelling house or outhouse, or shall give any order under which any dwelling house or outhouse shall be forcibly entered into or broken open, without a warrant from one or more justices of the peace, shall, on conviction thereof before two justices of the peace, forfeit a sum not exceeding £20.

Penalty for forcible entry in pursuit of deserters without warrant.

Sect. 83. If any person shall convey or cause to be conveyed into any military prison appointed to be a public prison under this Act any arms, tools, or instruments, or any mask or other disguise, in order to facilitate the escape of any prisoner, or shall by any means whatever aid and assist any prisoner to escape or in attempting to escape from such prison, whether an escape be actually made or not, such person shall be deemed guilty of felony, and upon being convicted thereof shall be kept to penal servitude for any term not less than five years and not exceeding seven years, or be imprisoned, with or without hard labour, for any term not exceeding two years; and if any person shall bring or attempt to bring into such prison, in contravention of the existing rules thereof, any spirituous or fermented liquor, he shall for every such offence be liable to a penalty not exceeding £20 and not less than £10, or to be imprisoned, with or without hard labour, for any time not exceeding three calendar months; and if any person shall bring into such prison, to or for any prisoner, without the knowledge of the governor, any money, clothing, provisions, tobacco, letters, papers, or any other articles not allowed by the rules of the prison to be in the possession of a prisoner, or shall throw into the said prison any such articles, or shall by desire

Penalties on aiding escape or attempting to escape of prisoners, and on breach of prison regulations.

1. *The Regular Soldiers.*

Certain provisions of Acts for regulating gaols to apply to military prisons.

Penalty on keepers of prisons for refusing to confine, etc., military offenders.

Penalty on purchasing soldiers' necessities, stores, etc.

of any prisoner, without the sanction of the governor, carry out of the prison any of the articles aforesaid, he shall for every such offence be liable to a penalty not exceeding £5, or to be imprisoned, either with or without hard labour, for any time not exceeding one calendar month; and if any person shall assault or violently resist any officer of such prison in the execution of his duty, or shall aid or excite any person so to assault or resist any such officer, he shall for every such offence be liable to a penalty not exceeding £5, or to be imprisoned, with or without hard labour, for any time not exceeding one calendar month, or, if the offender be a soldier already under sentence of imprisonment, he shall be liable for every such offence, upon conviction thereof by a board of not less than three of the visitors of the prison, to be imprisoned, either with or without hard labour, for any time not exceeding six calendar months, in addition to his original sentence, or to be subjected to corporal punishment not exceeding fifty lashes, or upon conviction thereof by a single visitor to be imprisoned, with or without hard labour, for any time not exceeding seventy-two hours, in addition to his original sentence, or to be subjected to corporal punishment not exceeding twenty-five lashes; or if such soldier shall, within forty-eight hours of the expiration of his original or of any additional sentence, be guilty of any offence against the rules of the prison, he may for every such offence, on conviction thereof by a board or by a single visitor, be ordered to be kept in prison for a period not exceeding seventy-two hours either in a dark cell or in a light cell, and with or without hard labour on a bread-and-water diet, or otherwise; and all the provisions of any Act or Acts of Parliament for the regulation or better ordering of gaols, houses of correction, or prisons in Great Britain shall be deemed to apply to all military prisons so far as any such provision relates to such offences; and it shall be lawful for the governor, provost marshal, officer, or servant of any military prison to use and exercise all the powers and authorities given by any such Act to the gaoler, keeper, or turnkey of any prison, or to his or their assistants, to apprehend or to cause offenders to be apprehended, in order to their being taken before a justice or justices of the peace; and all the powers and authorities given by any such Act to any justice or justices of the peace to convict offenders in any of the above cases, together with the forms of convictions contained in any such Act, shall be applicable to the like offences when committed in respect of military prisons; and all the provisions contained in any such Act relating to suits and actions prosecuted against any person for anything done in pursuance of such Act shall be deemed to apply to all suits and actions prosecuted against any person acting in pursuance of such Act in respect of military prisons.

Sect. 84. Any governor, provost marshal, gaoler, or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement, who shall refuse to receive and to confine, or to discharge or deliver over, any military offender in the manner hereinbefore prescribed, shall forfeit for every such offence the sum of £100.

Sect. 85. Any person who shall knowingly detain, buy, exchange, or receive from any soldier or deserter or any other person acting for or on his behalf, on any pretence whatsoever, or who shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell any arms, ammunition, medals for good conduct or for distinction, or other service, clothes, or military furniture, or any provisions, or any sheets or other articles used in barracks provided under barrack regulations, or regimental necessities, or any article of forage provided for any horses belonging to her Majesty's service, or who shall have in his or her possession or keeping any such arms, ammunition, medals, clothes, furniture, provisions, spirits, articles, necessities, or forage, and shall not give a satisfactory account how he or she came by the same, or shall change the colour of any clothes as aforesaid, shall forfeit for every

such offence any sum not exceeding £20, together with treble the value of all or any of the several articles of which such offender shall so become or be possessed; and if any person having been so convicted shall afterwards be guilty of any such offence, he shall for every such offence forfeit any sum not exceeding £20, but not less than £5, and the treble value of all or any of the several articles of which such offender shall have so become possessed, and shall in addition to such forfeiture be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for such term, not exceeding six calendar months, as the convicting justice or justices shall think fit; and upon any information against any person for a second or any subsequent offence, a copy of the former conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same proved to be a true copy, shall be sufficient evidence to prove such former conviction; and if any credible person shall prove on oath before a justice of the peace, or person exercising like authority according to the laws of the part of her Majesty's dominions in which the offence shall be committed, a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description hereinbefore described, on or with respect to which any such offence shall have been committed, such justice may grant a warrant to search for such property as in the case of stolen goods; and if upon such search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before the same or any other justice of the peace, to be dealt with according to law: Provided always, that it shall be lawful for the legislature of any of her Majesty's foreign dominions, on the recommendation of the officer or officers for the time being administering the government thereof, but not otherwise, to make provision by law for reducing such pecuniary penalty, if not exceeding £20, to such amount as may to such legislature appear to be better adapted to the ability and pecuniary means of her Majesty's subjects and others inhabiting the same, which reduced penalty shall be sued for and recovered in such and the same manner as the full penalty hereby imposed: Provided also, that it shall be competent to her Majesty, or to the person or persons administering the government of any such foreign dominions as aforesaid, to exercise, in respect of the laws so to be passed as aforesaid, all such powers and authorities as are by law vested in her Majesty or in any such officer or officers as aforesaid in respect of any other law made or enacted by any such legislature.

Sect. 86. If any constable or other person who by virtue of this Act shall be employed in billeting any officers or soldiers in any part of the United Kingdom shall presume to billet any such officer or soldier in any house not within the meaning of this Act, without the consent of the owner or occupier thereof; or shall neglect or refuse to billet any officer or soldier on duty, when thereunto required, in such manner as is by this Act directed, provided sufficient notice be given before the arrival of such troops; or shall receive, demand, or agree for any money or reward whatsoever, in order to excuse any person from receiving such officer or soldier; or shall quarter any of the wives, children, men or maid servants of any officers or soldiers, in any such houses, against the consent of the occupiers; or shall neglect or refuse to execute such warrants of the justices as shall be directed to him for providing carriages, horses, or vessels, or shall demand more than the legal rates for the same; or if any person ordered by any constable in manner hereinbefore directed to provide carriages, horses, or vessels shall refuse or neglect to provide the same according to the orders of such constable, or shall do any act or thing by which the execution of any warrants for providing carriages, horses, or vessels shall be hindered; or if any constable shall neglect to

1. *The Regular Soldiers.*

Penalties on civil subjects offending against the laws relating to billets.

1. *The Regular Soldiers.*

On toll collectors demanding toll from officers, soldiers, or for carriages;

and on persons personating soldiers, etc.

Penalties on the military offending against the laws relating to billets.

deliver in to the justices at quarter sessions lists of officers and soldiers of the foot guards quartered according to the provisions of this Act, or shall wilfully cause to be delivered defective lists of the same; or if any person liable by this Act to have any officer or soldier quartered upon him shall refuse to receive and to afford proper accommodation or diet in the house in which such officer or soldier is quartered, and to furnish the several things directed to be furnished to officers and soldiers, or shall neglect or refuse to furnish good and sufficient stables, together with good and sufficient oats, hay, and straw, in Great Britain and Ireland for each horse, in such quantities and at such rates as herein-before provided; or if any innkeeper or victualler not having good and sufficient stables shall refuse to pay over to the person or persons who may provide stabling such allowance by way of compensation as shall be directed by any justice of the peace, or shall pay any sum or sums of money to any soldier on the march in lieu of furnishing in kind the diet and small beer to which such soldier is entitled; or if any toll collector shall demand and receive toll from any of her Majesty's officers or soldiers, on duty or on their march, for themselves or for their horses, or from any recruits marching by route, or from any prisoners under military escort, or from any enrolled pensioners in uniform when called out for training or in aid of the civil power, or for any carriages or horses belonging to her Majesty, or employed in her service under the provisions of this Act, or in any of her Majesty's colonies, when conveying persons or baggage or returning therefrom, every such constable, victualler, toll keeper, or other person respectively shall forfeit for every such offence, neglect, or refusal any sum not exceeding £5 nor less than 40s.; and if any person shall personate or represent himself to be a soldier or a recruit, with the view of fraudulently obtaining a billet, or money in lieu thereof, he shall for every such offence forfeit any sum not exceeding £5 nor less than 20s.

Sect. 87. If any military officer shall take upon himself to quarter soldiers otherwise than is limited and allowed by this Act, or shall use or offer any menace or compulsion to or upon any mayor, constable, or other civil officer, tending to deter and discourage any of them from performing any part of their duty under this Act, or tending to induce any of them to do anything contrary to their said duty, such officer shall for every such offence (being thereof convicted before any two or more justices of the county by the oath of two credible witnesses) be deemed and taken to be thereupon cashiered, and shall be utterly disabled to hold any military employment in her Majesty's service; provided that a certificate of such conviction shall be transmitted by one of the said justices to the judge advocate in London, who is hereby required to certify the same to the commander-in-chief and secretary of state for the war department, and that the said conviction be affirmed at some quarter sessions of the peace of the said county held next after the expiration of three months after such certificate of the justice shall have been transmitted as aforesaid; and if any military officer shall take, or knowingly suffer to be taken, from any person, any money or reward for excusing the quartering of officers or soldiers, or shall billet any of the wives, children, men or maid servants of any officer or soldier, in any house, against the consent of the occupier, he shall, upon being convicted thereof before a general court-martial, be cashiered; and if any officer shall constrain any carriage to travel beyond the distance specified in the justice's warrant, or shall not discharge the same in due time for their return home on the same day, if it be practicable, except in the case of emergency for which the justice shall have given licence, or shall compel the driver of any carriage to take up any soldier or servant (except such as are sick) or any woman to ride therein, except in the cases of emergency as aforesaid, or shall force any constable, by threatening words, to provide saddle horses for himself or servants, or

shall force horses from their owners, or in Ireland shall force the owner to take any loading until the same shall be first duly weighed, if the same can be done within reasonable time, or shall, contrary to the will of the owner or his servant, permit any person whatsoever to put any greater load upon any carriage than is directed by this Act, such officer shall forfeit for every offence any sum not exceeding £5 nor less than 40s.

1. *The Regular Soldiers.*

Sect. 88. For the better preservation of game and fish in or near places where any officers shall at any time be quartered, be it enacted, that every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish in the United Kingdom of Great Britain and Ireland, shall for every such offence forfeit the sum of £5.

Penalty on killing game without leave.

Sect. 90. All offences for which any penalties and forfeitures are by this Act imposed not exceeding £20, over and above any forfeiture of value or treble value, shall and may be determined, and such penalties and forfeitures and forfeiture of value or treble value recovered, in every part of the United Kingdom, by and before one or more justice or justices of the peace, under the provisions of an Act passed in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, intituled, "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders:" Provided always, that in all cases in which there shall not be sufficient goods whereon any penalty or forfeiture can be levied, the offender may be committed and imprisoned for any time not exceeding six calendar months; which said recited Act shall be used and applied, in Scotland and in Ireland, for the recovery of all such penalties and forfeitures, as fully to all intents as if the said recited Act had extended to Scotland and Ireland, anything in the said recited Act, or in an Act passed in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, intituled "An Act to consolidate and amend the Acts regulating the Proceedings at Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions," in Ireland, to the contrary notwithstanding; and all such offences committed in the British isles or in any of her Majesty's dominions beyond the seas may be determined, and the penalties and forfeitures and forfeiture of value or treble value recovered, before any justices of the peace, or persons exercising like authority according to the laws of the part of her Majesty's dominions in which the offence shall be committed; and all penalties and forfeitures by this Act imposed exceeding £20 shall be recovered by action in some of the Courts of record at Westminster, or in Dublin, or in India, or in the Court of Session in Scotland, and in no other Court in the United Kingdom, and may be recovered in the British isles, or in any other parts of her Majesty's dominions, in any of the royal or superior Courts of such isles or other parts of her Majesty's dominions.

Recovery of penalties.

11 & 12 Vict. c. 43.

14 & 15 Vict. c. 98.

Sect. 91. One moiety of every penalty, not including any treble value, of any articles, adjudged or recovered under the provisions of this Act, shall go to the person who shall inform or sue for the same, and the remainder of the penalty, together with the treble value of any articles, or where the offence shall be proved by the person who shall inform, the whole of the penalty, shall be paid, in the United Kingdom, to the general agent for the recruiting service in London, and in India to the military secretary of the Government of the Presidency to which the Court by whom the penalty shall be adjudicated shall be subject, and elsewhere in her Majesty's dominions to the local military accountant, to be at the disposal of the secretary of state for the war department, anything in an Act passed in the fifth and sixth years of the reign of his late Majesty king William the fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or in

Appropriation of penalties.

5 & 6 Will. 4, c. 76.

1. *The Regular Soldiers.*

any other Act or Acts to the contrary notwithstanding. Every justice or Court adjudging any penalty under this Act shall report the same immediately, if in the United Kingdom, to the said secretary of state, if in India, to the said military secretary, and if elsewhere in her Majesty's dominions to the general or other officer commanding at the station.

Mode of recording a soldier's settlement.

Sect. 92. Any justice in the United Kingdom within whose jurisdiction any soldier in her Majesty's army, or on the permanent staff of the militia, having a wife or child, shall be billeted, may summon such soldier before him in the place where he is billeted, (which summons he is hereby directed to obey,) and take his examination in writing, upon oath, touching the place of his last legal settlement, and such justice shall give an attested copy of such examination to the person examined, to be by him delivered to his commanding officer, to be produced when required; which said examination and such attested copy thereof shall be at any time admitted as good and legal evidence of such last legal settlement before any justices or at any general or quarter sessions, although such soldier be dead or absent from the kingdom: Provided that in case any soldier shall be again summoned to make oath as aforesaid, then, on such examination or such attested copy thereof being produced by him or by any other person on his behalf, such soldier shall not be obliged to take any other oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required; provided also, that when no such examination shall have been required, the statement made by the recruit on his attestation of his place of birth shall be taken to be his last place of settlement until legally disproved.

Licences of canteens.

Sect. 93. When any person shall hold any canteen under proper authority of the war department, it shall be lawful for any two justices within their respective jurisdictions to grant or transfer any beer, wine, or spirit licence to such persons, without regard to time of year or to the notices or certificates required by any Act in respect of such licences; and the commissioners of excise, or their proper officers within their respective districts, shall also grant such licences as aforesaid; and such persons so holding canteens, and having such licences, may sell therein victuals and exciseable liquors, as empowered by such excise licence, without being subject to any penalty or forfeiture.

Commissaries, etc., to attest their accounts.

Sect. 95. All commissaries, regimental paymasters, and all other accountants for military services, storekeepers, and barrack masters, upon making up their accounts, and all commissaries and storekeepers upon returning from any foreign service, shall severally make the respective declarations described in the schedule to this Act annexed; which declarations, if made in any part of the United Kingdom, shall be made before some justice, or other person authorized to administer oaths and declarations, and if made on foreign service shall be made before the officer commanding in chief, or the second in command, or the quartermaster or deputy quartermaster-general or any assistant quartermaster-general of the army, who shall respectively have power to administer and receive the same.

Administration of oaths.

Sect. 96. All oaths and declarations which are authorized and required by this Act may be administered (unless where otherwise provided) by any justice of the peace, or other person having authority to administer oaths and declarations; and any person taking a false oath or declaration where an oath or declaration is authorized or required by this Act shall be deemed guilty of wilful and corrupt perjury, or of wilfully making a false declaration, and being thereof duly convicted shall be liable to such pains and penalties as by law any person convicted of wilful and corrupt perjury is subject and liable to; and every commissioned officer

Perjury.

convicted before a general court-martial of perjury, or of wilfully making a false declaration, shall be cashiered, and every soldier or other person amenable to the provisions of this Act found guilty thereof by a general, district, or garrison court-martial shall be punished at the discretion of such Court. In India, in all cases where any oath is hereby required to be taken, or any person is hereby required to be sworn, a solemn declaration or affirmation may be substituted, if by the laws for the time being in force in India such declaration or affirmation would be allowed to be substituted in the place of an oath, in case the party were about to depose as a witness in a civil action in any of the supreme Courts at the presidencies; and any person wilfully and knowingly giving false testimony on oath or solemn declaration or affirmation in any case wherein such oath or solemn declaration or affirmation shall have been made for the purpose of this Act, or any proceedings under this Act, shall be deemed guilty of wilful and corrupt perjury, and, being duly convicted thereof before a court-martial or otherwise, shall be liable to such pains and penalties as by any law in force in England, or by any law in force in India, any persons convicted of wilful and corrupt perjury are subject and liable to.

1. *The Regular Soldiers.*
Schedules.

Sect. 97. All crimes and offences which have been committed against any former Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, or against any Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, or against any of the articles of war made and established by virtue of either of the same, may, during the continuance of this Act, be tried and punished in like manner as if they had been committed against this Act; and every warrant for holding any court-martial under any such former Act shall remain in full force, and all proceedings of courts-martial convened and held under any such warrant shall be continued, notwithstanding the expiration of such Act: Provided always, that no person shall be liable to be tried or punished for any offence against any of the said Acts or articles of war which shall appear to have been committed more than three years before the date of the warrant for such trial, unless the person accused, by reason of his having absented himself, or of some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased.

Offences against
former Mutiny
Acts and articles
of war.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

Notice to be given to a Recruit at the Time of his Enlistment.

Date

186 .

(a)

Take notice, that you enlisted with _____ at _____ o'clock (b)
on the _____ day of _____, for the _____
regiment [instead of the words "for the _____ regiment"
any words may be substituted which are applicable to the case], and if you do
not come to [here name some place] on or before
o'clock (b) on the _____ day of _____, for the purpose of
being taken before a justice, either to be attested or to release yourself from your en-
gagement by repaying the enlisting shilling and any pay you may have received as a

(a) Name of the recruit.

(b) A.M. or P.M. as the case may be.
3 o 2

1. *The Regular Soldiers.* recruit, and by paying twenty shillings as smart money, you will be liable to be punished as a rogue and vagabond.

Schedules.

You are hereby also warned that you will be liable to the same punishment if you make any wilfully false representation at the time of attestation, or false answers to the questions now asked of you.

Signature of the non-commissioned officer serving the notice.

Questions this day put to the Recruit before Enlistment, as required by the "Mutiny Act."

1. What is your name?
2. In what parish, and in or near what town, and in what county were you born?
3. What is your age?
4. What is your trade or calling?
5. Are you an apprentice?
6. Are you married, or a widower, and, if so, have you any children?
7. Do you now belong to any regiment or any corps in her Majesty's army, or to the militia, or to the naval coast volunteers, or to the royal naval reserve force?
8. Have you ever served in the army, marines, or in her Majesty's Indian forces?
9. Have you ever been rejected as unfit for her Majesty's service?
10. Have you ever been marked with the letter D. or letters B.C.?

Attestation Paper.

Questions to be put to the Recruit before Attestation.

1. What is your name?
2. In what parish, and in or near what town, and in what county were you born? In the parish of _____,
in or near the town of _____,
in the county of _____.
3. What is your age? _____ years _____ months.
4. What is your trade or calling?
5. Are you an apprentice?
6. Are you married?
7. Do you now belong to the militia, or to the naval coast volunteers, or to the royal naval reserve force? or
Do you belong to any regiment or corps in her Majesty's army?
8. Have you ever served in the army, marines, militia, navy, or in her Majesty's Indian forces? (a)

(a) If so, the recruit is to state the particulars of his former service, and the cause of his discharge, and is to

produce his parchment certificate of discharge.

9. Have you ever been rejected as unfit for her Majesty's service, or for her Majesty's Indian forces, upon any prior enlistment?

10. Have you ever been marked with the letter D. or the letters B.C.?

11. Where, when, and by whom were you enlisted? At _____, on the _____ day of _____, at _____ o'clock, M. By _____.

12. Did you receive a notice, and did you understand its meaning?

13. For what bounty and kit did you enlist? _____ and a free kit.

14. Have you any objection to make to the manner of your enlistment?

15. Are you willing to be attested to serve in the _____ regiment of _____ or for "general service" for the term of twelve years, provided her Majesty should so long require your services; and also for such further term, not exceeding twelve months, as shall be directed by the commanding officer on any foreign, colonial, or Indian station?

Signature of Recruit

Witness

Declaration to be made by Recruit on Attestation.

I _____, do solemnly and sincerely declare, that to the best of my knowledge and belief the above answers to the foregoing questions made and signed by me are true; and that I am willing to be attested for the term of twelve years, provided her Majesty should so long require my services, and also for such further term, not exceeding twelve months, as shall be directed by the commanding officer on any foreign, colonial, or Indian station.

Signature of Recruit

Signature of Witness

Oath to be taken by a Recruit on Attestation.

I _____ do make oath, that I will be faithful and bear true allegiance to her Majesty, her heirs and successors, and that I will, as in duty bound, honestly and faithfully defend her Majesty, her heirs and successors, in person, crown, and dignity, against all enemies, and will observe and obey all orders of her Majesty, her heirs and successors, and of the generals and officers set over me.

So help me GOD.

Witness my hand,

Signature of Recruit

Witness present

The above questions were asked of the said _____ and answered by him in my presence, as herein recorded; and

Form of Oath to be taken by a Master whose Indentured Labourer in any of her Majesty's Colonies or Possessions has absconded. 1. *The Regular Soldiers.*

I of do make oath, that was
bound to me to serve as an indentured labourer by indenture dated the
day of for the term of years, and that the said
did on or about the day of abscond
and quit my service without my consent.

Witness, etc. [as for apprentice.]

Form of Justice's Certificate to be given to the Master of an Indentured Labourer.

to wit. } I one of her Majesty's justices of the peace of
at certify, that of came before me
the day of and made oath that
was bound to serve as an indentured labourer to him by indenture
dated the day of for the term of years,
and that the said indentured labourer did on or about the day
of abscond and quit the service of the said without
his consent.

Form of Declaration of Attestation of a Commissary's or Purveyor's Accounts.

I do solemnly and sincerely declare, that I have not applied any
moneys or stores or supplies under my care or distribution to my own use, or to the
private use of any other person by way of loan to such person or otherwise, or in
any manner applied them, or knowingly permitted them to be applied, to any other
than public purposes, according to the duty of my office.

Declared before me by the within-named
this day of

Justice of the peace of or Com-
mander-in-Chief, or second in command, etc.,
the army serving in etc., [as
the case may be.]

Form of Declaration of Attestation of a Storekeeper's Accounts.

I, storekeeper at, do hereby solemnly and sin-
cerely declare, that I have charged myself in this account with the several sums
drawn for or received by me on imprests, or for rents, sale of old stores, or for any
other article or service; that they are just and true, and include every sum for
which I am accountable during the period stated. I also solemnly declare, that I
have not, directly or indirectly, received any profit, fee, emolument, or advantage
whatever beyond my salary and authorized allowances, except the trifling ad-
vantage which may have arisen in respect to the fractional parts of a penny in the
totals of the pay lists, as sanctioned by the Regulations of 19th December,
1832 $\frac{8}{1176}$ (See Art. 246, at page 65, of Home Regulations); and I further so-
lemnly declare, that the several sums of money for which I have taken credit as
disbursements in this account, amounting to, have been actually
and bonâ fide paid by me for the respective services, without any deductions, to the
several persons entitled to the same, and that the receipts which accompany this

account have been actually signed and witnessed by the persons stated therein ; and I make this declaration, conscientiously believing the same to be true.

Storekeeper at

Magistrate for

I, _____, barrack master of the _____ barracks at _____, do hereby solemnly and sincerely declare that I have charged myself in this account with the several sums drawn for or received by me on imposts, or for rents, damages, and deficiencies, washing sheets, or for any other article or service; that they are just and true, and include every sum for which I am accountable during the period stated. I also solemnly declare, that I have not, directly or indirectly, received any profit, fee, emolument, or advantage whatever from or on account of the purchase or issue of any of the articles for the service of the said barracks, nor have I any property in lands, houses, tenements, or any article used or employed in the service of the war department; and I further solemnly declare, that the several sums of money for which I have taken credit as disbursements in this account, amounting to _____, have been actually and bonâ fide paid by me for the respective services, without any deductions, to the several persons entitled to the same, and that the receipts which accompany this account have been actually signed and witnessed by the persons stated therein; and I make this declaration, conscientiously believing the same to be true.

Barrack Master at .

Declared before me at this day of 18 ,

Magistrate for .

I, _____, do solemnly and sincerely declare, that the foregoing pay list of the _____ regiment of _____, for the period ended _____, 186 _____, contains charges of pay for only such non-commissioned officers, drummers, fifers, buglers, and privates as were effective and entitled to pay during, and regularly mustered at, the periods set against their names; that all those men who were not present at the respective musters taken by me on the _____, the _____, and the _____ have the true reasons of their absence stated against their names; and that every absence affecting the pay or allowances of such men which occurred between the respective musters is properly accounted for.

Also, that the list of commissioned officers prefixed to the said pay list contains a true and just statement of the names of all the commissioned officers who have been effective and entitled to pay as belonging to the said regiment for the periods therein set down against their respective names; also, that all the remarks opposite to their names on the muster roll have been correctly copied therein; and that the sum debited in the general state of this pay list for the pay of officers has been actually received by me and paid to them respectively.

Also, that the whole of the sums debited in this pay list and account, amounting to £ 10,000, have been actually and bonâ fide disbursed by me in conformity with the established regulations, and that the total sum received, drawn for, or required to be remitted for the several services therein charged,

including every receipt whatever, for which I am required to give credit in these accounts is

1. *The Regular Soldiers.*

Schedules.

Also, that the statement at the foot of this page contains a full and correct list of all abstracts of examination, and of all decisions on abstracts of examination, of the pay list of this regiment received between the _____ of _____, 186 (the date of the last pay list transmitted to the war office being that for the period ended the _____ 186) and the _____ of _____ 186 , the date of this pay list.

Also, that the total amount of the sums disallowed in the said decisions is credited in this pay list, in conformity with article 21 of the explanatory directions, dated the 1st July, 1848.

Also, that to the best of my knowledge and belief, both my sureties are now living; that the property of each is at least double that for which he is surety; and that they respectively reside at the places under mentioned.

Names of Sureties.

Places of Residence.

Paymaster.

Declared and subscribed before me, at _____, this _____ day of _____ 186 .

Justice of the Peace for

Form of Declaration of Attestation of the Accounts of a Military Accountant.

I hereby solemnly and sincerely declare that this account, comprised in _____ folios, is just and true, according to the best of my knowledge, information, and belief; and I make this declaration, conscientiously believing the same to be true.

Military Accountant.

Declared before me, at _____, this _____ day of _____, 18 .

No. _____.

Description return of _____ who was apprehended [or, "surrendered himself," as the case may be] on the _____ day of _____, and was committed to confinement at _____ on the _____ day of _____ as a deserter from [insert regiment or corps].

Age.

Height.

Feet.

Inches.

Complexion.

Hair.

Eyes.

Marks.

Probable date of Enlistment, and where.

Probable date of Desertion, and from what place.

Name and occupation and address of the

1. *The Regular Soldiers.**Schedules.*

person by whom or through whose means the deserter was apprehended and secured (a).

Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds (a).

I do hereby certify that the prisoner has been duly examined before me as to the circumstance herein stated, and has declared in my presence that he (b) a deserter from the above-mentioned corps.

Signature and address of Magistrate.

Signature of Prisoner.

Signature of Informant.

I certify that I have inspected the prisoner, and consider him (c) for military service.

Signature of Military Medical Officer, or of Private Medical Practitioner (d).

2. PERSONATING PENSIONERS, FORGERY, ETC.

The personation of pensioners (e).

By the 7 Geo. 4, c. 16, s. 38, if any person shall willingly and knowingly personate (f) or falsely assume the name or character, or procure any other to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person, entitled or supposed to be entitled to any pension, wages, pay, grant, or other allowance of money, prize money, or relief due or payable, or supposed to be due or payable, for or on account of any service done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person as aforesaid, in his Majesty's army, or other military service, or shall personate or falsely assume the name or character of the executor or administrator, wife, relation, or creditor of any such officer, non-commissioned officer, or soldier, or other person as aforesaid, in order fraudulently to receive any pension, wages, pay, grant, or other allowance of money, prize money, or relief due or payable, or supposed to be due or payable (g), for or on account of any services done or supposed to be done by any such officer, non-commissioned officer, soldier, or other per-

(a) It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up, and the details should be inserted by the magistrate in his own handwriting, or, under his direction, by his clerk.

(b) Insert "is" or "is not," as the case may be.

(c) Insert "fit" or "unfit," as the case may be; and, if unfit, state the cause of unfitness.

(d) No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it is shown that his services were not available.

(e) This section would seem to be

superseded, as to prize money, by the 2 Will. 4, c. 53, s. 49, *post*, 941.

(f) The offence will be complete, though the personated seaman be dead (*R. v. Martin, Russ. & R. 324*), or though the wages have in fact been paid. (*R. v. Cramp, Ib. 327*.)

(g) The forgery of the name of a person to a letter of attorney for the receipt of a pension "supposed to be due" to such person was held to be within the statute, although it appeared that no such pension actually existed. (*Reg. v. Pringle, 2 Moo. C. C. 127*; and see *R. v. Brown, 2 East, P. C. 1007*; *R. v. Tannet, Russ. & R. 351*.)

son as aforesaid; or if any person shall forge, or counterfeit, or alter, or cause or procure to be forged or counterfeited or altered, or knowingly and willingly act, aid, or assist in forging, counterfeiting, or altering the name or handwriting of any officer, non-commissioned officer, soldier, or other person, entitled, or supposed to be entitled to any pension, wages, pay, grant, allowance of money, prize money, or relief, due or payable, or supposed to be due or payable, for or on account of any such service or supposed service as aforesaid, or the name or handwriting of any officer, under officer, clerk, or servant of the said commissioners of the said hospital at Chelsea, or of any officer or person in any way concerned in the paying or ordering, directing, or causing the payment of the said pensions, wages, pay, money, allowance of money, prize money, or relief, or any of them; or shall forge, counterfeit, or alter, or cause or procure to be forged, counterfeited, or altered, or knowingly and willingly act, aid, or assist in forging, counterfeiting, or altering any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document, or authority whatsoever, relating to or anywise concerning the payment or obtaining or claiming any pension, wages, pay, grant, allowance of money, prize money, or relief, for and in order to the receiving, obtaining, or claiming any such pension, wages, pay, grant, allowance of money, prize money, or relief; or shall utter or publish as true, or knowingly and willingly act, aid, or assist in uttering or publishing as true, knowing the same to be forged, counterfeited, or altered, any such letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document, or authority whatsoever, with intent to obtain the payment of any such pension, wages, pay, money, or allowance of money, prize money, or relief, from the said commissioners of the said hospital at Chelsea, or from any officer, under officer, clerk, or servant of the said commissioners, or from the person authorized or supposed to be authorized, to pay the same, or with intent to defraud any person whatsoever, or any corporation whatsoever; every such person so offending (a), being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall and may be transported for life, or for such term of years as the Court shall adjudge (b).

1. *The Regular Soldiers.*

Forging documents.

Knowingly uttering such forgeries.

Punishment.

Forging certificates, etc., felony.

By the 2 & 3 Will. 4, c. 106, s. 3, if any person or persons shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting of any such authority or certificate (c), or bill of exchange, or shall utter as true any such false, forged, or counterfeited authority or certificate, or bill of exchange, knowing the same to be false, forged, or counterfeited, with intent to defraud any person or persons, body or bodies politic or corporate, every such person so offending (d), shall be deemed guilty of felony, and, being thereof lawfully convicted, shall be transported for seven years (e), or suffer imprisonment for any term not exceeding four years, as the Court shall direct.

(a) The Act contains no provision as to accessories; and they are therefore punishable under the 24 & 25 Vict. c. 94. (See the Act, *Vol. I.*, tit. "Accessories.")

(b) The punishment is now penal servitude for life or for any term not less than five years. (See the 20 & 21 Vict. c. 3, and the 27 & 28 Vict. c. 47, *post*, tit. "Penal Servitude.")

(c) That is the authority, or "certificate or order," of which a form is given in the schedule to the Act,

signed by the cashier or other proper officer in the army pay office, for drawing on the paymaster-general of the forces a bill of exchange for any half-pay, pension, or allowance, etc., as stated in sect. 1.

(d) See note (f), *ante*, p. 938.

(e) The punishment is now penal servitude for any term not exceeding seven and not less than five years. (See the 20 & 21 Vict. c. 3, and the 27 & 28 Vict. c. 47, *post*, tit. "Penal Servitude.")

1. *The Regular Soldiers.*

Persons entitled to half-pay, pensions, or allowances, may receive the same by remittance bills.

Party to whom remittance bills are payable to appear personally.

Power to inquire into the identity of parties, and to administer oaths.

Penalty for perjury.

Penalty for frauds respecting pensions.

Repayment to parishes of relief given to out-pensioners.

Sect. 4. Any officer or person who shall be entitled to any such half-pay, pension, allowance, or relief as aforesaid, shall be at liberty, whenever he or she shall think fit, to receive the same by means of a remittance bill, to be made out payable to any such person, and to be signed by the cashier of half-pay, the cashier of widows' pensions, or by the chief cashier, or by any cashier duly appointed and authorized to act for any of the said several cashiers for any or either of the services respectively which they are or may be respectively authorized by the said paymaster-general to pay; and every such remittance bill shall be drawn upon and made payable by the receiver-general of the land tax, the collector of the cess in Scotland, or any collector of the duties of customs or excise: and payment on every such remittance bill shall be made only to the party to whom the same shall be expressed to be payable, except in cases where such parties shall by illness or bodily infirmity be disabled from appearing personally, in which cases such disability being certified by the minister and churchwardens of the parish or place where the party shall reside, or by the physician, surgeon, or apothecary attending him or her, and there being no reason to doubt the authenticity or truth of such certificate, payment shall on that occasion be made on the production of the bill to the order in writing of the party to whom it is made payable: Provided always, that in case the receiver-general of the land tax, the collector of the cess in Scotland, or any collector of the duties of customs or excise, or any person acting for any of them respectively, whose duty it shall be to make payment on any remittance bill, shall entertain any doubt as to the identity of the party, the authenticity of the vouchers produced, or his or her title to receive payment, such receiver-general of the land tax, collector of the cess in Scotland, or collector of the duties of customs or excise, or any person acting for any of them respectively, shall inquire into the same by the oath of the party so applying, which oath such receiver-general of the land tax, collector of the cess in Scotland, and collector of the duties of customs or excise, and any person acting for any of them respectively, are hereby respectively authorized to administer for that purpose; and if any person shall in or by any such oath wilfully and corruptly swear any matter or thing which shall be false or untrue, being thereof lawfully convicted, he shall be subject and liable to the like pains and penalties as any person convicted of wilful and corrupt perjury is or shall be by any law in force subject and liable to.

See the cases as to personating seamen, *post*, tit. "Seamen," Vol. V.

By the 19 & 20 Vict. c. 15, s. 5, any person guilty of fraudulently receiving or endeavouring to receive pension money, or money in the nature of pension from the secretary at war, or from any officer or person employed or authorized to pay pensions, shall, upon conviction, be subjected to the same pains and penalties as are prescribed by law in the cases of frauds committed or attempted to be committed upon the commissioners of Chelsea Hospital, the lord high admiral or the commissioners of the admiralty, the treasurer of the navy, and the paymaster general.

By sect. 8, if any Chelsea or Greenwich pensioner shall be relieved, or become chargeable in Great Britain or Ireland in respect of relief afforded to himself, or to any person whom he is liable to maintain, or if in any case the secretary at war for the time being and the guardians of the poor of any union or parish, or the overseers of any parish or township not under a board of guardians, or the heritors and kirk session of any parish in Scotland think it desirable that the whole or any part of the pension of such pensioner should be advanced out of the poor's rate or funds applicable to the relief of the poor, it shall be lawful for the secretary at war by any writing under his hand or under the hand of any officer or person employed by him, to agree with such guardians or overseers, or heritors and kirk session for the repayment to them out of

the pension of any such pensioner of the amount of relief so advanced to or expended on his account, not exceeding in any case where relief has been administered to his wife or one child only whom he is bound to maintain, the amount of one-half, or where such relief has been administered to two or more such children or to his wife and one or more such child or children, the amount of two-thirds of his pension so advanced.

Sect. 9. In case any Chelsea or Greenwich pensioner shall be or become insane, it shall be lawful for the secretary at war for the time being, upon being satisfied of such insanity, to order that the pension of such insane pensioner, or so much thereof as shall appear to the said secretary at war to be necessary for his care and maintenance, shall be paid to such guardians of the poor or overseers, or heritors and kirk session, or to the wife, child, or any other person to whom the care of such insane pensioner may be entrusted, or who may be chargeable for or liable to the expense of his care and maintenance, and the receipt of the person or persons to whom the same shall be so paid shall be a sufficient voucher and discharge for so much money as shall appear to have been paid thereon: Provided always, that where no claim or demand shall be made for the support of any such insane pensioner, or where the charge for his care and maintenance does not amount to the full rate of his pension, then and in every such case it shall be lawful for the secretary at war, at his discretion, to order his pension, or so much thereof as may not be necessary for his care and maintenance as aforesaid, to be paid to his wife or child or children, if he have any.

1. *The Regular Soldiers.*

As to care of lunatic pensioners.

By the 30 & 31 Vict. c. 110, an army reserve force is constituted, and by sect. 14 of that Act, every man enrolled in the reserve force who carelessly loses, destroys, or damages any arms, accoutrements, ammunition, or clothing provided for him or entrusted to his charge, shall be liable to make good the same out of his pay, pension, or allowance as may be directed by any regulations made under this Act, together with such penalty, not exceeding double the amount of such loss or damage, as the secretary of state may direct. And every such man who wilfully damages or destroys, or who sells, pawns, or otherwise unlawfully disposes of any such arms, accoutrements, ammunition, or clothing, shall be liable to such forfeiture of pay, pension, or allowance as may be directed by such regulations. And any person knowingly purchasing or receiving the same shall, on summary conviction before any justice of the peace, forfeit any sum not exceeding £5; and one moiety of such penalty shall go to the person who informs for the same, and the other moiety, or where the offence is proved by the informer, then the whole of the penalty shall be paid and applied in such manner as the secretary of state may direct, anything in any Act to the contrary notwithstanding. And every justice who adjudges any such penalty shall within four days report the same and his adjudication thereof to her Majesty's principal secretary of state for the war department; and in this enactment the terms "justice of the peace" and "justice" shall respectively include, as regards Scotland, sheriff, sheriff substitute, and magistrate.

Penalty for damaging or selling or purchasing accoutrements, etc.

As to describing property in an indictment where it belongs to the Chelsea Hospital, see *ante*, "*Indictment*," 27.

By the 2 Will. 4, c. 53, s. 49, if any person shall knowingly and wilfully personate or falsely assume (a) the name or character, or procure any other person to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable (b) for or on account of any service performed or supposed to

Punishment of personation and forgery.

(a) See note (f), *ante*, 938.

(b) See note (g), *ante*, 938.

1. *The Regular Soldiers.*

have been performed by any officer, non-commissioned officer, soldier, or other person who shall have really served, or be supposed to have served in his Majesty's army or in any other military service, or shall personate or falsely assume, or act, aid, or assist in personating or falsely assuming the name or character, or procure any other person to personate or falsely assume the name or character of the executor or administrator, wife, widow, next of kin, relation or creditor of any such officer, non-commissioned officer, soldier, or other person as aforesaid, in order to receive or to enable any other person to receive any prize money, grant, bounty, money, share, or other allowance of money due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any such officer, non-commissioned officer, soldier, or other person as aforesaid; or if any person shall forge or counterfeit or alter, or cause or procure to be forged or counterfeited or altered, or knowingly and willingly act or aid or assist in forging or counterfeiting or altering the name or handwriting of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize money, grant, bounty money, share, or other allowance of money, due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any officer, non-commissioned officer, soldier, or other person who shall have really served or be supposed to have served in his Majesty's army, or other military service, or the name or handwriting of any officer or under officer, clerk, or servant of or in the employ of the commissioners of the said royal hospital at Chelsea, or the name or handwriting of any officer or person in any way concerned in the paying, or the ordering, directing, or causing the payment of any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid; or shall falsely make, forge, counterfeit, or alter, or willingly act, aid, or assist in the false making, forging, counterfeiting, procuring, or altering, any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, relating to or in anywise concerning the payment of or the obtaining or claiming any such prize money, grant, bounty money, share, or other allowance of money due or payable, or supposed to be due or payable as aforesaid, in order to receive, obtain, or claim any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, or shall utter or publish as true, or knowingly and willingly act or aid or assist in uttering or publishing as true any falsely made or forged or counterfeited or altered letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, with intention to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim from the said commissioners of the said royal hospital, or from any officer, under officer, clerk, or servant of the said commissioners, or from any person whatsoever authorized or supposed to be authorized to pay the same, the payment of any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever; or shall knowingly take a false oath in order to obtain letters of administration or the probate of any will, in order to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account or in respect of the service of any officer, non-commissioned officer, soldier, or other person, as aforesaid, who shall have really served or be supposed to have served in his Majesty's army or other military service, or shall demand or receive any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed

to be due or payable as aforesaid, upon letters of administration or a probate of a will, knowing the will on which such probate shall have been obtained to be false, forged, or counterfeited, or knowing such letters of administration or the probate of such will as last aforesaid to have been obtained by means of any such false oath, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever; all and every person so offending (a), being thereof lawfully convicted, shall be and are and is hereby declared and adjudged to be guilty of felony, and shall be transported beyond the seas for life, or for any term not less than seven years (b), as the Court before whom such person or persons shall be convicted shall adjudge.

3. RELIEF FROM THE PENALTIES OF THE VAGRANT ACTS.

By the 43 Geo. 3, c. 61, every soldier or marine duly discharged out of any regiment, and every sailor duly discharged out of any ship or vessel belonging to his Majesty's navy, carrying his discharge by the third day at the latest from the date thereof, to the mayor or chief magistrate of the city, town, port, or corporate place nearest to, or within fifteen miles from the place where he shall have received his discharge, shall receive from such mayor or chief magistrate a certificate under his hand, stating the place to which the person so discharged is desirous of going, being his home or place of legal settlement, together with the time to be fixed, not exceeding ten days for every one hundred miles, and so in proportion, except for a reasonable cause to be expressed in such certificate; and such person having and producing to such persons as shall lawfully demand to see the same, such discharge and such certificate as aforesaid, and being in his route accordingly both as to time and road, shall not, by reason of asking relief, be deemed to be a rogue or vagabond, within the meaning of the said Acts [32 Geo. 3, c. 45; 17 Geo. 2, c. 5], or either of them: Provided always, that every such discharge shall bear the true date, both as to the time when and the place where it was given, and shall express the sum or sums, if any, which were paid to such soldier or sailor at such time and place.

Sect. 2, reciting, that it frequently happens that where regiments are ordered upon foreign service, the wives of non-commissioned officers and soldiers being with their husbands are not permitted to embark, and having thereupon the like occasion to return to their homes or places of legal settlement, are under the like necessity of soliciting alms, and it is expedient that they also should be declared free and exempt from the fines and penalties of the said Acts, enacts, that the wife of any non-commissioned officer or soldier ordered for foreign service, making due proof of her not being permitted to embark with her husband before the mayor or chief magistrate of the city, town, port, or corporate place, nearest to, or within fifteen miles from the place at which the regiment to which the said non-commissioned officer or soldier belongs is ordered to embark, or of any other city, town, port, or corporate place, at which the said regiment shall happen to be on its march under orders for embarkation, shall receive from such mayor or chief magistrate a certificate under his hand and the corporate seal of such city, town, port, or place, stating the place to which she is desirous of going, being her home or place of legal settlement, together with the time to be fixed, not exceeding ten days for every hundred miles, and so in proportion, except for a reasonable cause to be expressed in such certificate; and such person having and producing to such person as shall lawfully demand the same, such certificate, and being in her route accordingly both as to

1. *The Regular Soldiers.*

Every soldier or sailor on carrying his discharge, within three days, to the nearest chief magistrate, shall receive a certificate of his settlement, on producing which, being in his route, he shall not, for asking relief, be deemed a vagabond.

Soldiers' wives not being permitted to embark with their husbands, shall receive from the nearest chief magistrate a like certificate, which shall entitle them to ask relief on their route, etc.

(a) See note (a), *ante*, 938.

(b) See note (e), *ante*, 939.

2. *Royal Marine Forces whilst on Shore.*

New certificates, in case of accident or sickness.

time and road, shall not, by reason of asking relief, be deemed to be a rogue or vagabond within the meaning of the said Acts, or either of them.

Sect. 3. In case of accident or sickness duly proved, which shall prevent the person having such certificate from proceeding on his or her journey, according to the terms prescribed therein, it shall and may be lawful to and for the chief magistrate of any other city, town, port, or corporate place where such person shall be or shall arrive, to grant a new certificate, stating therein the true reasons for granting the same, and containing the like provisions as are hereinbefore described, and annex the same to the former certificate.

Passes from admiralty or war office shall have the same effect as heretofore.

Sect. 4. Certificates or passes granted as heretofore from the office of admiralty or war office to discharged sailors, soldiers, or marines, or to the families of sailors, soldiers, or marines serving abroad, or lately deceased, to carry them to their respective homes, shall have the same effect and force to all intents and purposes whatever as the certificates herein permitted to be given by the magistrate as aforesaid; and that the terms of the same may be extended in each instance, which shall appear to require it, by a new certificate from another magistrate in manner hereinbefore mentioned.

As to vagrants in general, see "*Vagrants*," Vol. V.

II. *Royal Marine Forces whilst on Shore.*

Marine forces whilst on shore.

The 32 Vict. c. 5, being an Act passed for the regulation of her Majesty's royal marine forces while on shore, is in most respects the same with the above regulations for the army; only with some necessary variations in consequence of the marines being subject to the jurisdiction of the admiralty.

The ordinary course of law not to be interfered with.

Sect. 4. Nothing in this Act contained shall be construed to extend to exempt any officer or marine from being proceeded against by the ordinary course of law when accused of felony or misdemeanour, or of any misdemeanour other than the misdemeanour of refusing to comply with an order of justices for the payment of money; and any commanding officer who shall neglect or refuse, when due application shall be made to him for that purpose, to deliver over to the civil magistrate any officer or marine, or who shall wilfully obstruct, neglect, or refuse to assist any peace officer in apprehending any such offender, shall, upon conviction thereof in any of her Majesty's Courts at Westminster, Dublin, or Edinburgh, be deemed to be thereupon cashiered, and shall be utterly disabled to hold any civil or military office or employment in her Majesty's service; and a certificate of such conviction shall be transmitted to the secretary of the Admiralty.

Musters, and penalty on false musters.

Sect. 47. Musters, as have been customary, shall be taken of every division or company of royal marines once in every calendar month, as shall be appointed; and no officer or marine shall be absent from any such muster, unless duly certified to be employed on some other duty of the corps, or sick, or in prison, or on furlough; and every person belonging to her Majesty's service who shall give or procure to be given any untrue certificate thereby to excuse any person from any muster or other service which he ought to attend or perform, or shall make any false or untrue muster of man or horse, or who shall willingly allow or sign any false muster or duplicate thereof, or shall directly or indirectly take or receive any money or gratuity for mustering any person, or for signing any muster roll or duplicate, or shall knowingly muster any person

by a wrong name, shall, upon proof by two witnesses before a general court-martial, for any such offence be sentenced to be cashiered: Provided that it shall be lawful for her Majesty, in all cases whatsoever, instead of causing a sentence of cashiering to be put in execution, to order the offender to be reprimanded, or, in addition thereto, to suffer such loss of rank as may be deemed expedient; and any person who shall fraudulently offer or procure himself to be falsely mustered, or lend or furnish any horse to be falsely mustered, shall, upon proof thereof by the oaths of two witnesses before some justice of the peace residing near to the place where such muster shall be made, forfeit the sum of £20, and the informer, if he belongs to her Majesty's service, shall, if he demand it, be forthwith discharged; and if any person not belonging to her Majesty's service shall give or sign any untrue certificate of illness or otherwise in order to excuse any officer or marine from appearance at any muster, or whereby her Majesty's service may be defrauded, every person so offending shall for every offence forfeit the sum of £50.

2. *Royal Marine Forces whilst on Shore.*

Sect. 48. All muster rolls and pay lists of royal marines required to be verified upon oath shall be sworn before and attested by any justice of the peace, without fee or reward to himself or his clerk.

Verifying of muster rolls.

Sect. 50. Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or marine or soldier in her Majesty's service, or other person, to apprehend or cause to be apprehended such suspected person, and forthwith to bring him or cause him to be brought before any justice living in or near the place where he was so apprehended, and acting for the county or borough wherein such place is situate, or for the county adjoining such first-mentioned county or such borough; and such justice is hereby authorized and required to inquire whether such suspected person is a deserter, and from time to time to defer the said inquiry, and to remand the said suspected person, in the manner prescribed by an Act passed in the eleventh and twelfth years of the reign of her present Majesty, chapter forty-two, section twenty-one, and subject to every provision therein contained; and if it shall appear to the satisfaction of such justice, by the testimony of one or more witnesses taken upon oath, or by the confession of such suspected person, confirmed by some corroborative evidence upon oath, or by the knowledge of such justice, that such suspected person is a deserter, such justice shall forthwith cause him to be conveyed in civil custody to the head quarters or depot of the division to which he belongs, if stationed within a convenient and easily accessible distance from the place of commitment, or if not so stationed then to the nearest or most convenient public prison (other than a military prison) or police station legally provided as the lock-up house for temporary confinement of persons taken into custody, whether such prison or police station be in the county or borough in which such suspected person was apprehended or in which he was committed, or not; or if the deserter has been apprehended by a party of marines in charge of a commissioned officer, such justice may deliver him up to such party, unless the officer shall deem it necessary to have the deserter committed to prison for safe custody; and such justice shall transmit an account of the proceedings, in the form prescribed in the schedule annexed to this Act, to the secretary of the admiralty, specifying thereon whether such deserter was delivered to a party of marines in order to his being taken to the head quarters or depot of his division, or whether such deserter was committed to prison, to the end that the person so committed may be removed by an order from the said lord high admiral, or the said commissioners for executing the office of lord high admiral, or deputy adjutant-general of royal marines, and proceeded against according to law; and such justice shall also send to the secretary of the admiralty a report stating the

Apprehension of deserters.

2. *Royal
Marine
Forces whilst
on Shore.*

names of the persons by whom or by or through whose means the deserter was apprehended and secured, and the secretary of the admiralty shall transmit to such justice an order upon the proper department for the payment of the sum of 20s. as a reward to the person so certified to be entitled thereto; and for such information, commitment, and report as aforesaid the clerk of the said justice shall be entitled to a fee of 2s. and no more; and every gaoler and other person into whose custody any person charged with desertion is committed shall, immediately upon the receipt of the person so charged into his custody, pay such fee of 2s., and also, upon the production of a receipt from the medical practitioner who may have been required to examine such suspected person, a fee of 2s. 6d., and shall notify the fact to the secretary of the admiralty, and transmit also to the secretary of the admiralty a copy of the commitment, to the end that the secretary of the admiralty may order repayment of such fees; and that when any such person shall be apprehended and committed as a deserter in any part of her Majesty's foreign dominions, the justice shall forthwith cause him to be conveyed to some public prison, if the detachment to which he is suspected to belong shall not be in such part, or if the detachment be in such part, the justice may deliver him into custody at the nearest military post, although the detachment to which such person is suspected to belong may not be stationed at such military post, if within reasonable distance; and such justice shall in every case transmit to the officer commanding a description return in the form prescribed in the schedule to this Act annexed, to the end that such person may be removed by the order of such officer, and proceeded against according to law; and such description return, purporting to be duly made and subscribed in accordance with the Act, shall, in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters therein stated: Provided always, that any such person so committed as a deserter in any part of her Majesty's dominions shall, subject to the provisions hereinafter contained, be liable to be transferred, by order of the colonel commandant or other officer commanding, to serve in any division, corps, detachment, or party nearest to the place where he shall have been apprehended, or to any other division, corps, detachment, or party to which the lord high admiral or the commissioners for executing the office of lord high admiral may deem it desirable that he should be transferred, and shall also be liable after such transfer of service to be tried and punished as a deserter.

Transfer of
deserters.

Temporary cus-
tody of deserters
in gaols.

Sect. 52. Every gaoler or keeper of any public prison, gaol, house of correction, lock-up house, or other place of confinement in any part of her Majesty's dominions is hereby required to receive and confine therein every deserter who shall be delivered into his custody by any marine or other person conveying such deserter under lawful authority, on production of the warrant of the justice of the peace on which such deserter shall have been taken, or some order from the admiralty, which order shall continue in force until the deserter shall have arrived at his destination; and such gaoler or keeper shall be entitled to 1s. for the safe custody of the said deserter while halted on the march, and to such subsistence for his maintenance as shall be directed by the said lord high admiral or the said commissioners.

Fraudulent con-
fession of deser-
tion.

Sect. 53. Any person who, while serving in her Majesty's navy or in any of her Majesty's forces, or the embodied militia, shall to any officer, or subordinate, warrant, petty, or non-commissioned officer, fraudulently confess himself to be a deserter from her Majesty's royal marine forces, shall be liable to be tried by any court-martial under this Act, and punished according to the sentence thereof; and any person who shall voluntarily deliver himself up as and confess himself to be a deserter from her Majesty's royal marine forces, or who, upon being apprehended

for any offence, shall in the presence of the justice confess himself to be a deserter as aforesaid, shall be deemed to have been duly enlisted and to be a marine, and shall be liable to serve in her Majesty's royal marine forces, whether such person shall have been ever actually enlisted as a marine or not; or in case such person shall not be a deserter from the royal marine forces, or shall have been discharged therefrom or from any other corps for any cause whatever, or shall be incapable of service, he shall, on conviction thereof before two justices of the peace at or near the place where he shall deliver himself up or confess, or where he may at any time happen to be, be adjudged to be punished, if in England, as a rogue and vagabond, and if elsewhere by commitment to some prison or house of correction, there to be kept to hard labour for any time not exceeding three months, or shall be deemed guilty of obtaining money under false pretences within the true intent and meaning, if in England or Ireland, of an Act passed in the Session holden in the twenty-fourth and twenty-fifth years of Queen Victoria, intituled "An Act to Consolidate and Amend the Statute Law of England and Ireland relating to Larceny and other similar Offences," or, if in Scotland, shall be deemed guilty of falsehood, fraud, and wilful imposition; and every person so deemed to be guilty of obtaining money under false pretences, or of falsehood, fraud, and wilful imposition (as the case may be), shall be liable to be proceeded against and punished accordingly; and the confession and receiving subsistence as a marine by such person shall be evidence of the false pretence, or of the falsehood, fraud, and imposition (as the case may be), and of the obtaining money to the amount of the value of such subsistence, and the value of such subsistence so obtained may be charged in the indictment as so much money received by such person; and in case such person shall have been previously convicted of the like offence, or shall have been summarily convicted and punished in England as a rogue and vagabond, or in Scotland or Ireland by commitment, for making a fraudulent confession of desertion, such former conviction may be alleged in the indictment, and may be proved upon the trial of such person; and in such indictment for a second offence it shall be sufficient to state that the offender was at a certain time and place convicted of obtaining money under false pretences as a deserter, for making a fraudulent confession of desertion, without otherwise describing the said offence; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction of the former offence, purporting to be signed by the clerk of the court or other officer having the custody of the record of the Court where the offender was first convicted, or by the deputy of such clerk, or by the clerk of the convicting magistrates, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed such certificate; and if the person so confessing himself to be a deserter shall be serving at the time in her Majesty's royal marine forces, he shall be deemed to be and shall be dealt with by all justices and gaolers as a deserter.

2. *Royal Marine Forces whilst on Shore.*

24 & 25 Vict. c. 96.

Sect. 54. Any person who shall, in any part of her Majesty's dominions, by any means whatsoever, directly or indirectly, procure any marine to desert or absent himself from his duty without leave from his commanding officer, or attempt to procure or persuade any marine to desert or absent himself from his duty, and any person who, knowing that any marine is absent from his duty without leave from his commanding officer, shall harbour or conceal such marine, or aid or assist such marine in concealing himself, or aid and assist in his rescue, shall be deemed guilty of a misdemeanour, and shall, on conviction thereof before any two justices acting for the county, district, city, burgh, or place where any such offender shall at any time happen to be, be liable to be committed to the common gaol or house of correction, there to be im-

Punishment for inducing marines to desert.

2. *Royal
Marine
Forces whilst
on Shore.*

Extension of
furlough in case
of sickness.

prisoned, with or without hard labour, for such term not exceeding six calendar months as the convicting justices shall think fit.

Sect. 55. When there shall not be any officer of her Majesty's land or marine forces of the rank of captain or of a superior rank, or any adjutant of militia, within convenient distance of the place where any non-commissioned officer or marine, not borne on the books of any of her Majesty's ships or vessels in commission as aforesaid, and who shall be on furlough, shall be detained by sickness or other casualty rendering necessary an extension of such furlough, it shall be lawful for any justice who shall be satisfied of such necessity to grant an extension of furlough for a period not exceeding one month; and the said justice shall immediately certify such extension, and the cause thereof, to the commanding officer of the division or detachment to which the man belongs, if known, and if not, then to the secretary of the admiralty, in order that the necessary allowance of pay and subsistence may be remitted to the marine, who shall not during the period of such extension of furlough be liable to be treated as a deserter: Provided always, that nothing herein contained shall be construed to exempt any marine from trial and punishment, according to the provisions of this Act, for any false representation made by him in that behalf to the said officer or justice so extending the furlough, or for any breach of discipline committed by him in applying for and obtaining the said extension of furlough.

Marines liable to be taken out of her Majesty's service only for felony and certain misdemeanours, or for debts amounting to £30 and upwards;

but not liable to be taken out of her Majesty's service for debts under £30, or for not maintaining their families, or for breach of contract.

Sect. 56. Any person enlisted into her Majesty's royal marine forces as a marine, or who has received marine enlistment money, shall be liable to be taken out of her Majesty's service only by process or execution on account of any charge of felony, or on account of misdemeanour, or of any crime or offence other than the misdemeanour of refusing to comply with an order of justices for the payment of money, or on account of an original debt proved by affidavit of the plaintiff or of some one on his behalf to amount to the value of £30 at the least over and above all costs of suit, such affidavit to be sworn, without payment of any fee, before some judge of the Court out of which process or execution shall issue, or before some person authorized to take affidavits in such Court, of which affidavit, when duly filed in such Court, a memorandum shall, without fee, be endorsed upon the back of such process, stating the fact sworn to, and the day of filing such affidavit; but no marine or other person as aforesaid shall be liable by any process whatever to appear before any justice of the peace or other authority whatsoever, or to be taken out of her Majesty's service by any writ, summons, order, warrant, judgment, execution, or any process whatever issued by or by the authority of any Court of law, or any magistrate, justice or justices of the peace, or any other authority whatsoever, for any original debt not amounting to £30, or for not supporting or maintaining, or for not having supported or maintained, or for leaving or having left chargeable to any parish, township, or place, or to the common fund of any union, any relation or child which such marine or person might, if not in her Majesty's service, be compellable by law to relieve or maintain, or for neglecting to pay to the mother of any bastard child, or to any person who may have been appointed to have the custody of such child, any sum to be paid in pursuance of an order in that behalf, or for the breach of any contract, covenant, agreement, or other engagement whatever, by parol or in writing, or for having left or deserted his employer or master, or his contract, work, or labour; and all summonses, warrants, commitments, indictments, convictions, judgments, and sentences, on account of any of the matters for which it is herein declared that a marine is not liable to be taken out of her Majesty's service, shall be utterly illegal, and null and void to all intents and purposes; and any judge of any such Court may examine into any complaint made by a

marine or by his superior officer, and by warrant under his hand discharge such marine, without fee, he being shown to have been arrested contrary to the intent of this Act, and shall award reasonable costs to such complainant, who shall have for the recovery thereof the like remedy as would have been applicable to the recovery of any costs which might have been awarded against the complainant in any judgment or execution as aforesaid, or a writ of *habeas corpus ad subjiciendum* shall be awarded or issued, and the discharge of any such marine out of custody shall be ordered thereupon; provided that any plaintiff, upon notice of the cause of action first given in writing to any marine or left at his last quarters, may proceed in any action or suit to judgment, and have execution other than against the body or marine necessities or equipments of such marine: Provided also, that nothing herein contained relating to the leaving or deserting a master or employer, or to the breach of any contract, agreement, or engagement, shall apply to persons who shall be really and *bonâ fide* apprentices duly bound under the age of twenty-one years, as herein prescribed.

2. *Royal Marine Forces whilst on Shore.*

Sect. 57. No person who shall be commissioned and in full pay as an officer in the royal marine forces, or who shall be employed in enlisting for such forces, shall be capable of being nominated or elected to be sheriff, and no such officer and no non-commissioned officer of such forces shall be capable of being nominated or elected to be a constable or overseer, guardian of any union, or any officer of a like description, of any county, hundred, riding, city, borough, town, division, parish, or other place, or to be mayor, portreeve, alderman, or to hold any office in any municipal corporation in any city, borough, or place in Great Britain or Ireland, or be summoned or shall serve as a grand or petit or other juror or upon any inquest, and any summons for him to attend to serve as a grand or petit or other juror or upon an inquest shall be null and void; and every such person is hereby exempted from attendance and service in accordance with any such summons, and from all fines, pains, and penalties for or in consequence of not attending or serving as aforesaid.

Officers not to be sheriffs, mayors, etc.

Sect. 58. Every person authorized to enlist recruits for the royal marines shall first ask the person offering to enlist whether he belongs to the militia, and also such other questions as the said lord high admiral or the said commissioners may direct to be put to recruits, and shall, immediately after giving him enlisting money, serve him with a notice in the form set forth in the schedule to this Act annexed.

Questions to be put to recruits on enlisting.

Sect. 59. Every person who shall receive enlisting money in manner aforesaid shall upon such receipt be deemed to be enlisted as a marine in her Majesty's service, and while he shall remain with the recruiting party shall be entitled to be billeted.

Recruits when deemed to be enlisted.

Sect. 60. Every person so enlisted as aforesaid shall, within ninety-six hours (any intervening Sunday, Christmas Day, or Good Friday not included), but not sooner than twenty-four hours after such enlistment, appear, together with some person employed in the recruiting service, before a justice of the peace, not being an officer of the marines, for the purpose of being attested as a marine, or of objecting to his enlistment.

When recruits to be taken before a justice.

Sect. 61. When a recruit, upon appearing before a justice for the purposes aforesaid, shall dissent from or object to his enlistment, and shall satisfy the justice that the same was effected in any respect irregularly, he shall forthwith discharge the recruit absolutely, and shall report such discharge to the commandant of the division for which the marine shall have enlisted; but if the recruit so dissenting shall not allege or shall not satisfy the justice that the enlistment was effected irregularly, nevertheless upon repayment of the enlisting money and of

Dissent and relief from enlistment.

2. *Royal
Marine
Forces whilst
on Shore.*

any sum received by him in respect of pay, and of a further sum of 20s. as smart money, he shall be entitled to be discharged; and the sum paid by such recruit upon his discharge shall be kept by the justice, and, after deducting therefrom 1s. as the fee for reporting the payment to the secretary of the admiralty and to the said commandant, shall be paid over to any person belonging to the recruiting party who may demand the same; and the justice who shall discharge any recruit shall in every case give a certificate thereof, signed with his hand, to the recruit, specifying the cause thereof.

Attesting of
recruits.

Sect. 62. If the recruit on appearing before a justice shall not dissent from his enlistment, or dissenting shall within twenty-four hours return and state that he is unable to pay the sums mentioned in the last section, he shall be attested as follows: the justice, or some person deputed by him, shall read to the recruit the questions set forth in the form contained in the schedule to this Act annexed, cautioning him that if he fraudulently make any false answer thereto he shall be liable to be punished as a rogue and vagabond, and the answers of the recruit shall be recorded opposite to the said questions, and the justice shall require the recruit to make and sign the declaration in the said form, and shall then administer to him the oath of allegiance in the said form; and when the recruit shall have signed the said declaration and taken the oath, the justice shall attest the same by his signature, and shall deliver to the recruiting officer the declaration so signed and attested, and the fee for such attestation, including the declaration and oath, shall be 1s. and no more; and any recruit shall, if he so wish, be furnished with a certified copy of the above-mentioned declaration by the officer who finally approved of him for the service.

Recruits until
they have been
attested or re-
ceived pay not
triable by court-
martial, but in
certain cases
punishable as
rogues and vaga-
bonds.

Sect. 63. No recruit, unless he shall have been attested or shall have received pay other than enlisting money, shall be liable to be tried by court-martial; but if any recruit, previously to his being attested, shall by means of any false answer obtain enlistment money, or shall make any false statement in his declaration, or shall refuse to answer any question duly authorized to be put to recruits for the purpose of filling up such declaration, or shall refuse or neglect to go before a justice for the purposes aforesaid, or having dissented from his enlistment shall wilfully omit to return and pay such money as aforesaid, in any of such cases it shall be lawful for any two justices within the United Kingdom, or for any one justice out of the United Kingdom, acting for the county, district, city, burgh, or place where any such recruit shall at any time happen to be, when he shall be brought before them or him, if in England, to adjudge him to be a rogue and vagabond, and to sentence him to be punished accordingly, and if in Scotland or Ireland, or elsewhere in her Majesty's dominions, to be imprisoned with hard labour in any prison or house of correction for any period not exceeding three calendar months; and the declaration made by the recruit on his attestation, purporting to be made and subscribed in accordance with the schedule to this Act annexed, shall, in the absence of proof to the contrary, be deemed sufficient evidence of such recruit having represented the several particulars as stated in such declaration; and any marine who shall have given any false answer at the time of or relative to his becoming a marine shall forfeit all pay, wages, and other moneys, be the same naval, marine, or otherwise, which he might otherwise have been entitled to for any period of service in the royal marines.

Attested recruits
triable in some
cases either be-
fore two justices
or before a court-
martial.

Sect. 64. Any recruit who shall have been attested, and who shall afterwards be discovered to have given any wilfully false answer to any question directed to be put to recruits, or shall have made any wilfully false statement in the declaration hereinbefore mentioned, shall be liable, at the discretion of the said lord high admiral or the said commissioners, to be proceeded against before two justices in the manner hereinbefore

mentioned, and by them sentenced accordingly, or to be tried by a district or garrison court-martial for the same, and punished in such manner as such Court shall direct.

Sect. 65. If any recruit shall abscond so that it is not possible immediately to apprehend and bring him before a justice for attestation, the recruiting party shall produce to the justice before whom the recruit ought regularly to have been brought for that purpose a certificate of the name and place of residence and description of such recruit and of his having absconded, and shall declare the same to be true, and the justice to whom such certificate shall be produced shall transmit a duplicate thereof to the secretary of the admiralty in order that the same may appear in the *Police Gazette*.

Sect. 70. Any person duly bound as an apprentice who shall enlist into her Majesty's royal marine forces, and shall falsely state to the magistrate before whom he shall be carried and attested that he is not an apprentice, shall be deemed guilty of obtaining money by false pretences, if in England or in Ireland, and of falsehood, fraud, and wilful imposition, if in Scotland, and shall after the expiration of his apprenticeship, whether he shall have been so convicted and punished or not, be liable to serve as a marine according to the terms of the enlistment, and if on the expiration of his apprenticeship he shall not deliver himself up to some officer authorized to receive recruits, such person may be taken as a deserter from her Majesty's royal marine forces.

Sect. 71. No master shall be entitled to claim an apprentice who shall enlist as a marine in her Majesty's service unless such master shall, within one calendar month next after such apprentice shall have left his service, go before some justice, and take the oath mentioned in the schedule to this Act annexed, and at the time of making his claim produce to the officer under whose command the recruit shall be the certificate of such justice of his having taken such oath, which certificate such justice is required to give in the form in the schedule to this Act annexed; nor unless such apprentice shall have been bound, if in England, for the full term of five years (not having been above the age of fourteen years when so bound), and, if in Ireland or in the British isles, for the full term of five years at the least (not having been above the age of sixteen when so bound), and, if in Scotland, for the full term at least of four years, by a regular contract or indenture of apprenticeship, duly extended, signed, and tested, and binding on both parties by the law of Scotland prior to the period of enlistment, and unless such contract or indenture in Scotland shall, within three months after the commencement of the apprenticeship and before the period of enlistment, have been produced to a justice of the peace of the county in Scotland wherein the parties reside, and there shall have been endorsed thereon by such justice a certificate or declaration signed by him specifying the date when and the person by whom such contract or indenture shall have been so produced, which certificate or declaration such justice of the peace is hereby required to endorse and sign; nor unless any such apprentice shall, when claimed by such master, be under twenty-one years of age: Provided always, that any master of an apprentice indentured for the sea service shall be entitled to claim and recover him in the form and manner above directed, notwithstanding such apprentice may have been bound for a less term than five or four years as aforesaid: Provided also, that any such master who shall give up the indentures of apprenticeship within one month after the enlisting of such apprentice shall be entitled to receive, to his own use, so much of the bounty payable to such recruit as shall not have been paid to such recruit before notice given of his being an apprentice.

2. *Royal Marine Forces whilst on Shore.*

Recruits absconding.

Apprentices enlisting to be liable to serve after the expiration of their apprenticeship.

Claims of masters to apprentices.

No apprentice claimed by the

Sect. 72. No apprentice claimed by his master shall be taken from

2. *Royal
Marine
Forcès whilst
on Shore.*

master shall be
taken away with-
out a warrant.

Punishment of
apprentices en-
listing.

any division, detachment, recruiting party, or ship of her Majesty, except under a warrant of a justice residing near and within whose jurisdiction such apprentice shall then happen to be, and before whom he shall be carried; and such justice shall inquire into the matter upon oath (which oath he is hereby empowered to administer), and shall require the production and proof of the indenture, and that notice of the said warrant has been given to the commanding officer, and a copy thereof left with some officer or non-commissioned officer of the party, and that such person so enlisted declared that he was no apprentice; and such justice, if required by such officer or non-commissioned officer, shall commit the offender to the common gaol of the county, division, or place for which such justice is acting, and shall keep the indenture to be produced when required, and shall bind over such person as he may think proper to give evidence against the offender, who shall be tried at the next or at the sessions immediately succeeding the next general or quarter sessions of such county, division, or place, unless the Court shall for just cause put off the trial; and the production of the indenture, with the certificate of the justice that the same was proved, shall be sufficient evidence of the said indenture; and every such offender in Scotland may be tried by the judge ordinary in the county or stewartry in such and the like manner as any person may be tried in Scotland for any offence not inferring a capital punishment: Provided always, that any justice not required as aforesaid to commit such apprentice may deliver him to his master.

Billeting of
marines.

Sect. 75. And whereas there is and may be occasion for the marching, also for the quartering of the royal marine forces when on shore: be it enacted, that during the continuance of this Act, upon the order or orders in writing in that behalf under the hand of the lord high admiral, or the hands of two or more of the commissioners for executing the office of lord high admiral for the time being, or upon the order or orders in writing in that behalf under the hand of any colonel commandant or commanding officer of any division of royal marines, it shall be lawful for all constables and other persons specified in this Act in Great Britain and Ireland, and they are hereby required, to billet the officers and marines, whether marching or otherwise, and all staff and field officers' horses, and all bāt and baggage horses belonging to the royal marine forces, when on actual service, not exceeding for each officer the number for which forage is or shall be allowed by her Majesty's regulations in victualling houses and other houses specified in this Act, taking care in Ireland not to billet less than two men in any one house; and they shall be received by the occupiers of the houses in which they are so billeted, and be furnished by such victualler with proper accommodation in such houses, and with a separate bed for each marine, or if any victualler shall not have sufficient accommodation in the house upon which a marine is billeted, then in some good and sufficient quarters to be provided by such victualler in the immediate neighbourhood, and in Great Britain with diet and small beer, and in Great Britain and Ireland with stables, oats, hay, and straw for such horses as aforesaid, paying and allowing for the same the several rates hereinafter provided; and at no time when marines are on their march shall any of them be billeted above one mile from the place mentioned in the route, care being always taken that the billets be made out for the less distant houses in which suitable accommodation can be found before making out billets for the more distant; and in all places where marines shall be billeted in pursuance of this Act, the officers and their horses shall be billeted in one and the same house, except in case of necessity; and the constables are hereby required to billet all marines on their march in the manner required by this Act upon the occupiers of all houses within one mile of the place mentioned in the route, and whether they be in the same or a different county in like manner in every respect as if such houses were all locally

situated within such place: Provided always, that nothing herein contained shall be construed to extend to authorize any constable to billet marines out of the county to which such constable belongs when the constable of the adjoining county shall be present and shall undertake to billet the due proportion of men in such adjoining county; and no more billets shall at any time be ordered than there are effective marines and horses present to be billeted; all which billets, when made out by such constables, shall be delivered into the hands of the commanding officer present, or to the non-commissioned officer on the spot; and if any person shall find himself aggrieved by having an undue proportion of marines billeted in his house, and shall prefer his complaint, if against a constable or other person not being a justice, to one or more justices, and if against a justice, then to two or more justices, within whose jurisdiction such marines are billeted, such justices respectively shall have power to order such of the marines to be removed and to be billeted upon other persons as they shall see cause; and when any horses belonging to the officers of her Majesty's royal marine forces shall be billeted upon the occupiers of houses who shall have no stables, then, upon a written requisition of the officer commanding such marines, the constable is hereby required to billet the horses upon some other person or persons having stables, and who are by this Act liable to have officers and marines billeted upon them, and any two or more justices of the peace may order a proper allowance to be paid by the persons relieved to the persons receiving such horses, or to be applied in the furnishing the requisite accommodation; and the commanding officer may exchange any man or horse billeted in any place with another man or horse billeted in the same place, for the convenience or benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses respectively, and the constables are hereby required to billet such men and horses so exchanged accordingly; and it shall be lawful for any justice, at the request of any officer or non-commissioned officer commanding any marines requiring billets, to extend any route, or to enlarge the district within which billets shall be required, in such manner as shall appear to be most convenient to her Majesty's service: Provided also, that to prevent or punish all abuses in billeting marines, it shall be lawful for any justice, within his jurisdiction, by warrant or order under his hand, to require any constable to give him an account in writing of the number of officers and marines who shall be quartered by such constables, together with the names of the persons upon whom such officers and marines are billeted, stating the street or place where such persons dwell, and the signs, if any, belonging to the houses: Provided always, that no officer shall be compelled or compellable to pay anything for his lodging where he shall be duly billeted: Provided also, that no justice being an officer of royal marines shall directly or indirectly be concerned in billeting or appointing quarters under this Act.

2. *Royal
Marine
Forces whilst
on Shore.*

Sect. 76. The innholder or other person on whom any marine is billeted in Great Britain shall, if required by such marine, furnish him for every day on the march, and for a period not exceeding two days, when halted at any intermediate place upon the march, and for the day of the arrival at the place of final destination, with one hot meal in each day, the meal to consist of such quantities of diet and small beer as may be fixed by her Majesty's regulations, not exceeding one pound and a quarter of meat previously to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper, and for such meal the innholder or other person furnishing the same shall be paid the sum of 10*d.*, and 2½*d.* for a bed; and all innholders and other persons on whom marines may be billeted in Great Britain or Ireland, except when on the march in Great Britain, and entitled to be furnished with the hot meal as aforesaid, shall

Allowance to
Innkeepers.

2. *Royal
Marine
Forces whilst
on Shore.*

furnish such marines with a bed, and with candles, vinegar, and salt, and shall allow them the use of fire, and the necessary utensils for dressing and eating their meat, and shall be paid in consideration thereof the sum of 4*d.* per diem for each marine; and the sum to be paid to the innholder or other person on whom any of the horses belonging to her Majesty's royal marine forces shall be billeted, in Great Britain or Ireland, for ten pounds of oats, twelve pounds of hay, and eight pounds of straw, shall be 1*s.* 9*d.* per diem for each horse; and every officer or non-commissioned officer commanding a division, detachment, or party shall every four days, or before they shall quit their quarters if they shall not remain so long as four days, settle and discharge the just demands of all victuallers or other persons upon whom such officers, marines, or horses are billeted, out of the pay and subsistence of such officers and marines, before any part of the said pay or subsistence be paid or distributed to them respectively; and if any such officer or non-commissioned officer shall not pay the same as aforesaid, then, upon complaint and oath made thereof by any two witnesses before two justices of the peace for the county, riding, division, liberty, city, borough, or place where such quarters were situate, sitting in quarter or petty sessions, the secretary of the admiralty is hereby required, upon certificate of the justices before whom such oath shall be made of the sum due to complainant, to order payment of the amount which shall be charged against such officer; and in case of any marines being suddenly ordered to march, and of the commanding officer or non-commissioned officer not being enabled to make payment of the sums due on account of billets, every such officer or non-commissioned officer shall before his departure make up the account with every person upon whom any such marines may have been billeted, and sign a certificate thereof; which account and certificate, on being transmitted to the secretary of the admiralty, shall be immediately paid, and charged to the account of such officer or non-commissioned officer.

Supply of car-
riages.

Sect. 77. For the regular provision of carriages for the royal marine forces and their baggage on their marches in Great Britain and Ireland, all justices of the peace within their several jurisdictions, being duly required thereunto by order of the said lord high admiral, or two or more of the commissioners for executing the said office of lord high admiral for the time being, or any colonel commandant or commanding officer of a division of royal marines, shall, on the production of such order, or a copy thereof certified by the commanding officer, to them or any one or more of them, by the officer or non-commissioned officer of the party of marines so ordered to march, issue a warrant to any constable having authority to act in any place from, through, near, or to which such marines shall be ordered to march (for each of which warrants a fee of 1*s.* only shall be paid), requiring him to provide the carriages, horses, oxen, and drivers therein mentioned (allowing sufficient time to do the same), specifying the places from and to which the said carriages shall travel, and the distance between the places, for which distance only so specified payment shall be demanded, and which distance shall not, except in cases of pressing emergency, exceed the day's march prescribed in the order of route, and shall in no case exceed twenty-five miles; and the constables receiving such warrant shall order such persons as they shall think proper, having carriages, to furnish the requisite supply, who are hereby required to furnish the same accordingly; and in case sufficient carriages cannot be procured within the proper jurisdiction, any justice of the next adjoining jurisdiction shall, by a like course of proceeding, supply the deficiency; and in order that the burden of providing carriages may fall equally, and to prevent inconvenience arising from there being no justice residing near the place where marines may be quartered on the march, the justice or justices residing nearest to such place shall cause a list to be made out, at least once in every year, of all persons liable to furnish such carriages, and of

the number and description of their said carriages, which list shall at all reasonable hours be open to the inspection of the said persons, and shall, by warrant under his hand, authorize the constables within his jurisdiction to give orders to provide carriages without any special warrant from him for that purpose, which orders shall be valid in all respects; and all orders for such carriages shall be made from such lists in regular rotation, so far as the same can be done.

*2. Royal
Marine
Forces whilst
on Shore.*

Sect. 78. In every case in which the whole distance for which any carriage shall be impressed shall be under one mile, the rate of a full mile shall be paid; and the rates to be paid for carriages impressed shall be, in Great Britain, for every mile which a waggon with four or more horses, or a wain with six oxen or four oxen and two horses, shall travel, 1s.; and for every mile any waggon with narrow wheels, or any cart with four horses carrying not less than fifteen hundredweight, shall travel, 9d.; and for every mile every other cart or carriage with less than four horses, and not carrying fifteen hundredweight, shall travel, 6d.; and in Ireland for every hundredweight loaded on any wheel carriage, $\frac{1}{2}$ d. per mile; and in Great Britain such further rates may be added, not exceeding a total additional sum per mile of 4d., 3d., or 2d., to the respective rates of 1s., 9d., and 6d., as may seem reasonable to the justices assembled at general sessions for their respective districts, or to the recorder at the sessions of the peace of any municipal city, borough, or town; and the order of such justices or recorder shall specify the average price of hay and oats at the nearest market town at the time of fixing such additional rates, and the period for which the order shall be enforced, not exceeding ten days, beyond the next general sessions; and no such order shall be valid unless a copy thereof, signed by the presiding magistrate and one other justice, or by the recorder, shall be transmitted to the secretary of the admiralty within three days after the making thereof; and also in Great Britain when the day's march shall exceed fifteen miles, the justice granting his warrant may fix a further reasonable compensation not exceeding the usual rate of hire fixed by this Act; and when additional rates or compensation shall be granted, the justice shall insert in his own hand in the warrant the amount thereof, and the date of the order of sessions, if fixed by sessions, and the warrant shall be given to the officer commanding as his voucher; and the officer or non-commissioned officer demanding carriages by virtue of the warrant of a justice shall, in Great Britain, pay down the proper sums into the hands of the constable providing carriages, who shall give receipts for the same on unstamped paper; and, in Ireland, the officers or non-commissioned officers as aforesaid shall pay the proper sums to the owners or drivers of the carriages, and one third part of such payment shall be made before the carriage be loaded, and all the said payments in Ireland shall be made, if required, in presence of a justice or constable; and no carriage shall be liable to carry more than thirty hundredweight in Great Britain, and in Ireland no car shall be liable to carry more than six hundredweight, and no dray more than twelve hundredweight; but the owner of such carriages in Ireland consenting to carry a greater weight shall be paid at the same rate for every hundredweight of the said excess; and the owners of such carriages in Ireland shall not be compelled to proceed, though with any less weight, under the sum of 8d. a mile for each car and 6d. a mile for each dray; and the loading of such carriages in Ireland shall be first weighed, if required, at the expense of the owner of the carriage, if the same can be done in a reasonable time without hindrance of her Majesty's service: Provided also, that a cart with one or more horses, for which the furnisher shall receive 9d. a mile, shall be required to carry fifteen hundredweight at the least; and that no penalties or forfeitures in any Act relating to highways or turnpike roads in the United Kingdom shall apply to the number of horses or oxen or weight of loading of the afore-

Rates for car-
riages.

2. *Royal
Marine
Forces whilst
on Shore.*

said carriages, nor shall any such carriages on that account be stopped or detained; and whenever it shall be necessary to impress carriages for the march of marines from Dublin, at least twenty-four hours' notice of such march, and in case of emergency as long notice as the case will admit, shall be given to the lord mayor of Dublin, who shall summon a proportional number of cars and drays at his discretion out of the licensed cars and drays and other cars and drays within the county of the said city, and they shall by turns be employed on this duty at the prices and under the regulations herein-before mentioned; and no country cars, drays, or other carriages coming to markets in Ireland shall be detained or employed against the will of the owners in carrying the baggage of marines on any pretence whatever.

As to supply of
carriages, etc.,
in cases of emer-
gency.

Sect. 79. It shall be lawful for the lord high admiral, or the commissioners for executing the office of lord high admiral, or the lord lieutenant or chief governors of Ireland, by their or his orders distinctly stating that a case of emergency doth exist, signified by the secretary of the admiralty, or, if in Ireland, by the chief secretary or under secretary, or the first clerk in the military department, to authorize any commanding officer of her Majesty's royal marine forces in any district or place, or to the chief acting agents for the supply of stores and provisions, by writing under his hand, reciting such order of the lord high admiral, or the said commissioners, or lord lieutenant or chief governors aforesaid, to require all justices within their several jurisdictions in Great Britain and Ireland to issue their warrants for the provision, not only of waggons, wains, carts, and cars kept by or belonging to any person and for any use whatsoever, but also of saddle horses, coaches, postchaises, chaises, and other four-wheeled carriages kept for hire, and of all horses kept to draw carriages licensed to carry passengers, and also of boats, barges, and other vessels used for the transport of any commodities whatsoever upon any canal or navigable river as shall be mentioned in the said warrants, therein specifying the place and distance to which such carriages or vessels shall go; and on the production of such requisition, or a copy thereof certified by the commanding officer, to such justice, by any officer of the corps ordered to be conveyed, such justice shall take all the same proceedings in regard to such additional supply so required on such emergency as he is by this Act required to take for the ordinary provision of carriages; and all provisions whatsoever of this Act as regards the procuring of the ordinary supply of carriages, and the duties of officers and non-commissioned officers, justices, constables, and owners of carriages in that behalf, shall be to all intents and purposes applicable for the providing and payment according to the rates of posting or of hire usually paid for such other description of carriages or vessels so required on emergency, according to the length of the journey or voyage in each case, but making no allowance for post horse duty, or turnpike, canal, river, or lock tolls, which duty or tolls are hereby declared not to be demandable for such carriages and vessels while employed in such service or returning therefrom; and it shall be lawful to convey thereon not only the baggage, provisions, and military stores of such detachment, but also the officers, marines, servants, women, children, and other persons of and belonging to the same.

Justices of peace
to direct pay-
ment of sums ex-
pended for car-
riages, etc.

Sect. 80. It shall be lawful for the justices of the peace assembled at their quarter sessions to direct the treasurer to pay, without fee, out of the public stock of the county or riding, or if such public stock be insufficient then out of moneys which the said justices shall have power to raise for that purpose, in like manner as for county gaols and bridges, such reasonable sums as shall have been expended by the constables within their respective jurisdictions for carriages and vessels, over and above what was or ought to have been paid by the officer requiring the same, regard being had to the season of the year and the condition of

the ways by which such carriages and vessels are to pass; and in Scotland such justices shall direct such payments to be made out of the rogues money and assessments directed and authorized to be assessed and levied by an Act passed during the session holden during the twentieth and twenty-first years of the reign of her present Majesty, chapter seventy-two.

*2. Royal
Marine
Forces whilst
on Shore.*

Sect. 82. All officers and marines on duty or on their march, being in proper uniform, dress or undress, and their horses and baggage, and all recruits marching by route, and all prisoners under military escort, and all carriages and horses belonging to her Majesty or employed in her service under the provisions of this Act, or in any of her Majesty's colonies, when employed in conveying any such persons as aforesaid or their baggage, or returning from conveying the same, shall be exempted from the payment of any duties and tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or in passing along or over any turnpike or other roads or bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any prescription, grant, or custom, or by virtue of any Act or ordinance, order or direction, of any colonial legislature or other authority in any of her Majesty's colonies; and if any toll collector shall demand or receive toll from any marine officer or marine on duty or on their march who shall be in proper uniform, dress or undress, or for their horses, and who by this Act is exempted from payment thereof, or from any recruits marching by route, or from any prisoners under military escort, or for any carriages or horses belonging to her Majesty or employed in her service under the provisions of this Act, when conveying persons or baggage, or returning therefrom, every such collector shall for every such offence be liable to a penalty not exceeding £5; provided that nothing herein contained shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels are liable thereto, except when employed in cases of emergency as herein mentioned; and that when any officers or marines on service shall have occasion in the march by route to pass regular ferries in Scotland, the officer commanding shall be at liberty to pass over with his marines as passengers, paying for himself and each marine one half only of the ordinary rate payable by passengers, or he shall be at liberty to hire the ferry boat for himself and his party, debarring all others for that time, and shall in such case pay only half the ordinary rate for such boat.

Exemption from
tolls.

Sect. 83. Every marine upon being discharged from the service shall be entitled to an allowance (not exceeding in any case the amount of twenty-one days' marching money) to enable him to reach his home, or the place at which he shall, at the time of his discharge decide to take up his residence, such place not being at a greater distance from the place of his discharge than the place of his original enlistment, which allowance shall be calculated according to the distance he has to travel: Provided always, that no person who shall purchase his own discharge, or be discharged on account of misbehaviour, or at his own desire, before the expiration of his period of service, shall be entitled to any such allowance.

Marching money
on discharge.

Sect. 84. If any constable or other person who by virtue of this Act shall be employed in billeting any officers or marines in any part of the United Kingdom shall presume to billet any such officer or marine in any house not within the meaning of this Act without the consent of the owner or occupier thereof; or shall neglect or refuse to billet any officer or marine on duty when thereunto required in such manner as is by this Act directed, provided sufficient notice be given before the arrival of such marines; or shall receive, demand, or agree for any money or re-

Penalties upon
civil subjects
offending against
the laws relating
to billets and
carriages.

2. *Royal
Marine
Forces whilst
on Shore.*

ward whatsoever in order to excuse any person from receiving any such officer or marine; or shall quarter any of the wives, children, men or maid servants of any officer or marine in any such houses against the consent of the occupiers; or shall neglect or refuse to execute such warrants of the justices as shall be directed to him for providing carriages, horses, or vessels, or shall demand more than the legal rates for the same; or if any person ordered by any constable in manner hereinbefore directed to provide carriages, horses, or vessels shall refuse or neglect to provide the same according to the orders of such constable, or shall demand more than the legal rates for the same, or shall do any act or thing by which the execution of any warrants for providing carriages, horses, or vessels shall be hindered; or if any person liable by this Act to have any officer or marine quartered on him shall refuse to receive any such officer or marine, or to afford him proper accommodation or diet in the house of such person in which he is quartered, or to furnish the several things directed to be furnished to officers and marines, or shall neglect or refuse to furnish good and sufficient stables, together with good and sufficient oats, hay, and straw in Great Britain and Ireland, for each horse, in such quantities and at such rates as hereinbefore provided, or if any innkeeper or victualler not having good and sufficient stables shall refuse to pay over to the person or persons who may provide stabling such allowance by way of compensation as shall be directed by any justice of the peace, or shall pay any sum of money to any marine on the march in lieu of furnishing in kind the diet and small beer to which such marine is entitled; such constable, victualler, and other person respectively shall forfeit for every offence, neglect, or refusal, any sum not exceeding £5 nor less than 40s.; and if any person shall personate or represent himself to be a marine or marine recruit with the view of fraudulently obtaining a billet or money in lieu thereof, he shall for every such offence forfeit any sum not exceeding £5 nor less than 20s.

Penalty upon
officers of ma-
rines so offend-
ing.

Sect. 85. If any officer of royal marines shall take upon him to quarter men otherwise than is allowed by this Act, or shall use or offer any menace or compulsion to or upon any justice, constable, or other civil officer tending to deter and discourage any of them from performing any part of their duty under this Act, or to do anything contrary thereto, such officer shall for every such offence, being thereof convicted before any two or more justices of the county by the oath of two credible witnesses, be deemed and taken to be *ipso facto* cashiered, and shall be utterly disabled to hold any military employment in her Majesty's service; provided a certificate of such conviction be forthwith transmitted by the said justices to the secretary of the admiralty, and that the conviction be affirmed at some quarter sessions of the peace for the said county to be held next after the expiration of three months after such certificate shall have been transmitted as aforesaid; and if any marine officer shall take or knowingly suffer to be taken from any person any money or reward for excusing the quartering of officers or marines, or shall billet any of the wives, children, men or maid servants of any officer or marine in any house against the consent of the occupier, he shall for any of the said offences, upon being convicted thereof before a general court-martial, be cashiered; and if any officer shall constrain any carriage to travel beyond the distance specified in the justice's warrant, or shall not discharge the same in due time for their return home on the same day if it be practicable, except in the case of emergency for which the justice shall have given licence, or shall compel the driver of any carriage to take up any marine or servant (except such as are sick) or any woman to ride therein, except in cases of emergency as aforesaid, or shall force any constable, by threatening words, to provide saddle horses for himself or servants, or shall force horses from their owners, or in Ireland shall force the owner to take any loading until the same shall be first duly

weighed, if the same shall be required, and can be done within a reasonable time, or shall, contrary to the will of the owner or his servant, permit any person whatsoever to put any greater load upon any carriage than is directed by this Act, he shall forfeit for every offence any sum not exceeding £5 nor less than 40s.

Sect. 86. Every marine officer or marine who shall, without warrant from one or more of her Majesty's justices, forcibly enter into or break open the dwelling-house or outhouse of any person whomsoever in pursuit of any deserters, shall, upon due proof thereof, forfeit the sum of £20.

Sect. 87. Any person who shall detain, buy, or exchange, or otherwise receive from any marine or marine deserter, or any other person acting for or on his behalf, upon any account or pretence whatsoever, or who shall solicit or entice any marine or marine deserter, or shall be employed by any marine or marine deserter, knowing him to be such, to sell any arms, ammunition, medals for good conduct, or distinguishment, or other service, marine clothes, or military furniture, or any other articles which, according to the custom of the marine corps, are generally deemed regimental or divisional necessities, or any provisions, sheets, or other articles used in barracks or provided under barrack regulations, whether on shore or afloat, and whether the marine or marine deserter or other person be or be not borne on the books of any one of her Majesty's ships, or be or be not embarked, or who shall have in his or her possession or keeping any arms, ammunition, medals, marine clothes, or military furniture, or any other articles which, according to the custom of the marine corps, are generally deemed regimental or divisional necessities, or any provisions, spirits, sheets, or other articles used in barracks or provided under barrack regulations, and shall not give a satisfactory account how he or she came by the same, or shall change or cause the colour or mark of any such clothes, appointments, necessities, sheets, or other articles to be changed or defaced, or who shall pawn, sell, or deposit in any place or with any person such articles of regimental necessities, with or without the consent of such marine, shall forfeit for every such offence any sum not exceeding £20, together with treble the value of all or any of the several articles; and if any person having been at any time previously convicted of either of the above offences under this or any previous Act for the regulation of her Majesty's Royal Marine forces while on shore shall afterwards be guilty of any such offence, he or she shall for every such offence forfeit any sum not exceeding £20 but not less than £5, and the treble value of all or any of the several articles, and shall, in addition to such forfeiture, be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned with or without hard labour, for such term not exceeding six calendar months as the convicting justice or justices shall think fit; and upon any information against any person for a second or any subsequent offence, a copy of the former conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same proved to be a true copy, shall be sufficient evidence to prove such former conviction; and if any credible person shall prove, on oath before a justice of the peace or person exercising like authority according to the laws of that part of her Majesty's dominions in which the offence shall be committed, a reasonable cause to suspect that any person has in his or her possession or on his or her premises any property of the description hereinbefore described, on or with respect to which any such offence shall have been committed, such justice may and he is hereby required to grant a warrant to search for such property as in the case of stolen goods; and if upon such search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before the same or any other justice of the peace, to be dealt with according to law.

*2. Royal
Marine
Forces whilst
on Shore.*

Penalty for forcible entry in pursuit of deserters without warrant.

Penalty for purchasing clothes, etc., from any marine.

2. *Royal
Marine
Forces whilst
on Shore.*

Penalty on un-
lawful recruit-
ing.

Sect. 88. Every person (except such recruiting parties as may be stationed under military command) who shall cause to be advertised, posted, or dispersed bills for the purpose of procuring recruits or substitutes for the royal marines, or shall open or keep any house or place of rendezvous or office, or receive any person therein under such bill or advertisement as connected with the marine recruiting service, or shall directly or indirectly interfere therewith, without permission in writing from the lord high admiral or the said commissioners for executing the office of lord high admiral, shall forfeit for every such offence a sum not exceeding £20.

Penalty on kill-
ing game with-
out leave.

Sect. 89. For the better preservation of the game and fish in or near places where any officer shall at any time be quartered, every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish within the United Kingdom, shall for every such offence forfeit the sum of £5.

Recovery of
penalties.

Sect. 91. All offences for which any pecuniary penalty or forfeiture not exceeding £20, over and above any forfeiture of value or treble value, is by this Act imposed, shall and may be heard and determined by any justice of the peace in or near to the place where the offence shall be committed, or where the offender may at any time happen to be; and all such penalties and forfeitures, and forfeiture of value and treble value, and also the reasonable costs attending the prosecution, to be duly ascertained and awarded by such justice, shall and may be enforced and recovered in the same manner as any pecuniary penalties may be recovered under the provisions of an Act passed in the twelfth year of the reign of her Majesty, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders:" Provided always, that in all cases in which there shall not be sufficient goods whereon any penalty or forfeiture or treble value can be levied, the offender may be committed and imprisoned, with or without hard labour, for any time not exceeding six calendar months; which said recited Act shall be used and applied in Scotland and in Ireland for the recovery of all such penalties and forfeitures or treble value as fully to all intents as if the said recited Act had extended to Scotland and Ireland, anything in the said recited Act, or in an Act passed in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, intituled "An Act to Consolidate and Amend the Acts regulating the Proceedings at Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions," in Ireland, to the contrary notwithstanding; and all such offences committed in the British Isles, or in any of her Majesty's dominions other than the United Kingdom, may be determined, and the penalties and forfeitures of value or treble value recovered, before any justices of the peace or persons exercising like authority, according to the laws of her Majesty's dominions in which the offence shall be committed or the offender may at any time happen to be, and for default of payment the offender shall be punished as if the offence had been committed in the United Kingdom; and all penalties and forfeitures by this Act imposed exceeding £20 shall be recovered by action in some of the Courts of Record at Westminster or in Dublin, or in the Court of Session in Scotland, and in no other Court in the United Kingdom, and may be recovered in the British Isles or in any other part of her Majesty's dominions, in any of the royal or superior Courts of such isles or other parts of her Majesty's dominions.

11 & 12 Vict.
c. 43.

14 & 15 Vict.
c. 93.

Appropriation of
penalties.

Sect. 92. One moiety of every such penalty or forfeiture, not including any treble value of any articles, shall go to the person who shall inform or sue for the same, and the other moiety, together with the treble value of such articles, or, where the offence shall be proved by the person who

shall inform, then the whole of the penalty and such treble value, shall be paid over and applied in such manner as the lord high admiral or the commissioners for executing the office of lord high admiral shall direct, anything in an Act passed in the sixth year of the reign of his late Majesty king William the fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or in any other Act or Acts of Parliament, to the contrary notwithstanding; and every justice who shall adjudge any penalty under this Act shall within four days thereafter at the furthest report the same, and his adjudication thereof, to the secretary of the admiralty.

2. *Royal Marine Forces whilst on Shore.*

5 & 6 Will. 4, c. 76.

Sect. 93. It shall be lawful for any two justices of the peace, within their respective jurisdictions, to grant or transfer any licence for selling by retail any spirit, beer, wine, cider, or perry to any person or persons applying for the same who shall hold any canteen under any lease thereof, or by agreement with any department or other authority under the said lord high admiral, or the commissioners for executing the office of lord high admiral for the time being, without regard to the time of year, or any notices or certificates required by any Act in respect of such licences; and the commissioners of excise or their proper officers within their respective districts shall also grant or transfer any such licence as aforesaid; and such persons holding such canteens, and having such licences as aforesaid, may sell therein victuals, and all such exciseable liquors as they shall be licensed and empowered to sell, without being subject for so doing to any penalty or forfeiture whatever.

Licences of canteens.

Sect. 94. Any justice in the United Kingdom, within whose jurisdiction any marine shall be quartered on shore, may summon such marine before him, which summons such marine is hereby required to obey, and take his examination in writing upon oath touching the place of his last legal settlement; and such justice shall give an attested copy of such examination to the person so examined, to be by him delivered to his commanding officer to be produced when required; which said examination and such attested copy thereof shall be at any time admitted as good and legal evidence as to such legal settlement before any justice or at any general or quarter sessions of the peace, although such marine be dead or absent from the kingdom: Provided always, that in case any marine shall be again summoned to make oath as aforesaid, then, on such examination or such attested copy being produced, such marine shall not be obliged to make any other or further oath with regard to his legal settlement, but shall leave with such justice a copy of such examination or a copy of such attested copy of examination, if required: Provided also that, when no such examination shall have been required, the statement made on oath by the recruit on his attestation of his place of birth shall be taken to be his last place of settlement until legally disproved.

Mode of recording a marine's settlement.

Sect. 95. All oaths and declarations which are authorized or required by this Act may be administered (unless where otherwise provided) by any justice of the peace or other person having authority to administer oaths and declarations; and any person giving false evidence, or taking a false oath or declaration where an oath or declaration is authorized or required to be taken by this Act, and being thereof duly convicted, shall be deemed guilty of wilful and corrupt perjury, and shall be liable to such pains and penalties as persons convicted of wilful and corrupt perjury are or may be subject and liable to; and every commissioned officer convicted before a general court-martial of perjury shall be cashiered, and every marine or other person amenable to the provisions of this Act found guilty thereof by a general or other court-martial shall be punished at the discretion of such Court.

Administration of oaths.

Perjury.

Sect. 96. All clauses and provisions in this Act contained relating to England shall be construed to extend to Wales and to the town of

Definition of terms.

2. *Royal Marine Forces whilst on Shore.*

Marines not to be billeted in private houses, etc.

Berwick-upon-Tweed; and the provisions of this Act shall apply to all persons who are or shall be commissioned or in pay as an officer of royal marines, or who are or shall be listed or in pay as a non-commissioned officer or marine; and all clauses and provisions relating to marines shall be construed to include non-commissioned officers and drummers, unless when otherwise provided; and all clauses and provisions relating to justices shall be construed to extend to all magistrates authorized to act as such in their respective jurisdictions; and all the powers given to and regulations made for the conduct of constables, and all penalties and forfeitures for any neglect thereof, shall extend to all tithingmen, head-boroughs, and such like officers, and to all inspectors or other officers of police, and to high constables and other chief officers and magistrates of cities, towns, villages, and places in England and Ireland, and to all justices of the peace, magistrates of burghs, commissioners of police, and other chief officers and magistrates of cities, towns, villages, parishes, and places in Scotland, who shall act in the execution of this Act; and all powers and provisions for billeting marines in victualling houses shall extend and apply to all inns, hotels, livery stables, alehouses, and to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, to all houses of persons licensed to sell beer, ale, porter, cider, or perry by retail, to be consumed or drunk in their dwelling houses or premises, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail in Great Britain and Ireland; and in Ireland, when there shall not be found sufficient room in such houses, then marines may be billeted in such manner as has been heretofore customary: Provided always, that no officer or marine shall be billeted in Great Britain in any private houses, or in any canteen held or occupied under the authority of the admiralty, war, or marine department, or upon persons who keep taverns only, being vintners of the City of London admitted to their freedom of that company in right of patrimony or apprenticeship, notwithstanding such persons who keep such taverns only have taken out victualling licences; nor in the house of any distiller kept for distilling brandy and strong waters; nor in the house of any shopkeeper whose principal dealings shall be more in other goods and merchandise than in brandy and strong waters, so as such distillers and shopkeepers do not permit tipping in such houses; nor in the house or residence in any part of the United Kingdom of any foreign consul duly accredited as such.

Notice to be given to a Recruit at the time of his Enlistment.

Date

186 .

A. B.

Take notice, that you enlisted with _____ at _____ o'clock (a)
on the _____ day of _____ for the royal marines, and if you
do not come forward to [here state some place] on or before
o'clock (a) on the _____ day of _____ for the purpose of
being taken before a justice, either to be attested or to release yourself from
your engagement by repaying the enlisting shilling and any pay you may have
received as a recruit, and by paying twenty shillings as smart money, you will
be liable to be punished as a rogue and vagabond.

You are hereby also warned that you will be liable to the same punishment
if you make any wilfully false representations at the time of attestation.

Signature of the Non-commissioned
Officer serving the Notice.

(a) At A.M. or P.M., as the case may be.

- Declaration to be made by Recruit on Attestation.

2. Royal
Marine
Forces whilst
on Shore.

Schedule.

I, _____, now residing in the parish of _____, in the
county of _____, do solemnly and sincerely declare that, to the best of
my knowledge and belief, I was born in the parish of (a) _____ in or
near the town of (b) _____ in the county of (c) _____, and
am _____ years of age; that I am of the trade or calling of
[or, of no trade or calling, as the case may be]; that I am not an apprentice;
that I am married [that I am not a widower; that I am a widower, and that
I have (or, have not) children, or not married, as the case may be]; that I do
not belong to the militia, or to the naval coast volunteers, or royal naval volun-
teers, or to any portion of her Majesty's land or sea forces; that I have never
served her Majesty by land or sea in any military, marine, or naval employ-
ment whatsoever, except _____; that I have never been marked with
the letter D; that I have never been rejected as unfit for her Majesty's service
on any previous enlistment; that I was enlisted at _____ on the
day of _____ 186____, at _____ o'clock _____ M. by
_____ of _____, and that I have read [or, had read to me]
the notice then given to me and understood its meaning; that I enlisted for a
bounty of _____ and a free kit [as the case may be], and have no
objection to make to the manner of my enlistment; that I am willing to be
attested to serve in the royal marines for the term of _____ [the blank
after the words "term of" to be filled up with twelve years, if the person en-
listed is of the age of eighteen years or upwards; but if under that age, then
the difference between his age and eighteen is to be added to such twelve
years], provided her Majesty should so long require my services, and also for
such further term, not exceeding two years, as shall be directed by the command-
ing officer on any foreign station.

Signature of Recruit.

Signature of Witness.

Oath to be taken by a Recruit on Attestation.

I do make oath that I will be faithful and bear true allegiance to her
Majesty, her heirs and successors; and that I will, as in duty bound, honestly
and faithfully defend her Majesty, her heirs and successors, in person, crown,
and dignity, against all enemies, and will observe and obey all orders of her
Majesty, her heirs and successors, and of the generals and officers set over me.
So help me GOD.

Witness my hand,

Signature of the Recruit.

Witness present.

Declared and sworn before me at _____ this _____ day of _____
one thousand eight hundred and _____ at _____ o'clock.

Signature of the Justice.

Form of Oath to be taken by a Master whose Apprentice has absconded.

I _____ of _____ do make oath that I am by trade a
_____, and that _____ was bound to serve as an apprentice
to me in the said trade, by indenture dated the _____ day of _____

(a), (b), (c) These blanks need not be filled up if the recruit is unable to
give the requisite information.

2. *Royal Marine Forces whilst on Shore.* *for the term of or about the service without my consent, and that to the best of my knowledge and belief the said is aged about* *years; and that the said day of last abscond and quit my* *did on*

Schedule. *Witness my hand at the day of one thousand eight hundred and .*
Sworn before me at this day of one thousand eight hundred and .

Form of Justice's Certificate to be given to the Master of an Apprentice.

I one of her Majesty's justices of the peace of to wit. } certify that of came before me at the day of one thousand eight hundred and , and made oath that he was by trade a , and that was bound to serve as an apprentice to him in the said trade, by indenture dated the day of , for the term of years; and that the said apprentice did on or about the day of abscond and quit the service of the said without his consent, and that to the best of his knowledge and belief the said apprentice is aged about years.

Description return of who was apprehended [or, surrendered himself, as the case may be] on the day of , and was committed to confinement at on the day of as deserter from the royal marines.

Age. *Feet.* *Inches.*
Height.
Complexion.
Hair.
Eyes.
Marks.

Probable date of Enlistment, and where.
Probable date of Desertion, and from what place.

Name and occupation and address of the person by whom or through whose means the deserter was apprehended and secured (a).

Particulars of the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds (a).

I do hereby certify that the prisoner has been duly examined before me as to the circumstance herein stated, and has declared in my presence that he (b) a deserter from the above-mentioned corps.

Signature and address of Magistrate.

Signature of Prisoner.

Signature of Informant.

(a) It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up, and the details should be inserted by the

magistrate in his own handwriting, or, under his direction, by his clerk.

(b) Insert "is" or "is not," as the case may be.

I certify that I have inspected the prisoner, and consider him (a) for

*3. The
Militia.*

*Signature of Military Medical Officer, or
of Private Medical Practitioner.*

III. The Militia.

[15 & 16 Vict. c. 50; 17 & 18 Vict. c. 105; 18 & 19 Vict. c. 57; 23 & 24 Vict. c. 94; 29 & 30 Vict. c. 60.]

Soon after the restoration of King Charles the Second, when the military tenures were abolished, it was thought proper to ascertain the power of the Militia, to recognize the sole right of the crown to govern and command them, and to put the whole into a more regular method of military subordination (13 Car. 2, c. 6; 14 Car. 2, c. 3; 15 Car. 2, c. 4); and the order in which the militia now stands by law is principally built upon the statutes which were then enacted. It is true the last two of them are apparently repealed, but many of their provisions are re-enacted, with the addition of some new regulations, by the present militia laws; the general scheme of which is to discipline a certain number of the inhabitants of every county, chosen by lot for three years, and officered by the lord-lieutenant, the deputy lieutenants, and other principal landholders, under a commission from the crown. They are not compellable to march out of their counties, unless in case of invasion or actual rebellion within the realm (or any of its dominions or territories, stat. 16 Geo. 3, c. 3), nor in any case compellable to march out of the kingdom. They are to be exercised at stated times, and their discipline in general is liberal and easy; but, when drawn out into actual service, they are subject to the rigours of martial law, as necessary to keep them in order. This is the constitutional security which our laws have provided for the public peace, and for protecting the realm against foreign or domestic violence. (1 *Chitty's Bl. Com.* p. 411.)

At a period subsequent to the date of the remarks of the learned author above cited, the importance of the subject caused a fresh remodelling of the law; for by the 42 Geo. 3, c. 90 (26th June, 1802), the chief former Acts respecting the militia (excepting such as related to the city of London, Tower Hamlets, the Stannaries, and the Cinque Ports), were repealed, and the militia raised under such Acts were then to be subject, and all deficiencies to be supplied, and the men so raised were to serve according to this latter Act; which, amended and varied in many of its provisions by subsequent legislative enactments, long remained the directing guide in all matters appertaining to the militia.

When, however, the altered state of our national affairs, the consequence of a continued peace, rendered so extensive a military force the less necessary for the protection of the kingdom, it was deemed expedient by the Legislature, in 1829 (by the 10 Geo. 4, c. 10), to suspend the making of lists, and the ballots and enrolments for the militia, and to regulate certain of the expenses attendant upon the same. And although this suspension was, by that Act, expressed to be but for a "limited period," a short Act has been passed every year since that time to continue the same.

In 1852 and 1854 the laws relating to the militia were again remodelled; and, although compulsory service is practically at an end, subject, however, to the liability of its revival by the Legislature ceasing to pass the annual Act for suspending the making of lists, etc., yet the

(a) Insert "fit" or "unfit," as the case may be; and, if unfit, state the cause of unfitness.

3. *The Militia.*

militia has been re-established as a volunteer force, and is annually called out for training. We shall proceed, therefore, to give such of the enactments now in force as relate to the duties of magistrates and parish officers:—

Militia may be billeted in the beer-houses in which soldiers may be billeted.

By the 15 & 16 Vict. c. 50, s. 34, the provisions of any Act or Acts applicable for or to the quartering and billeting of the militia shall extend and be applicable for and to the quartering and billeting of the militia in the houses and premises of all persons licensed to sell beer or cider by retail under the 11 Geo. 4 & 1 Will. 4, c. 64, and the Acts amending the same, to whom, under such Acts or any of them, the provisions in respect of billeting soldiers in victualling houses contained in any Act for punishing mutiny and desertion, and the better payment of the army and their quarters, are declared or made to extend.

Place for militia storehouse to be provided.

By the 17 & 18 Vict. c. 105, s. 2, in all cases where any place provided for the purpose of keeping therein the arms, accoutrements, clothing, and other stores belonging to any regiment, battalion, or corps of militia when not embodied is or may become from any cause insecure, insufficient, or unfit for the safe custody of such arms, accoutrements, clothing, or other stores, or in case the public service or convenience require the site of the same to be changed, or in case no such place has been provided, the justices of the peace for such county at their general or quarter sessions next ensuing assembled, upon the representation of the lord lieutenant of such county, and of the colonel or commandant of such regiment, battalion, or corps, that no such place has been provided, or that the place provided is insecure, insufficient, or unfit, being duly satisfied thereof, may and they are hereby required to provide a secure and suitable place for that purpose, and to that end they may in their discretion from time to time resolve either to purchase or hire any suitable buildings or premises, and, if necessary, to enlarge, alter, or improve the same, or from time to time to enlarge, alter, or improve any buildings or premises already purchased or hired, or to purchase or take on lease for any term not less than sixty years any portion of land for the purpose of building and to build or rebuild thereupon secure and suitable buildings and premises for the purpose aforesaid, and, with reference to any such purpose as is hereby authorized, the clauses and provisions of the "Lands Clauses Consolidation Act, 1845," with respect to the purchase of lands by agreement shall be incorporated with this Act; and the words "promoters of the undertaking" in those clauses shall mean the persons by this Act authorized to purchase land; and the word "undertaking" shall mean the building or rebuilding, enlarging, or altering of a place for militia stores: Provided always, that the place to be so hired, purchased, built, altered, or enlarged shall contain an orderly and guard room and magazine, and a sufficient yard or place wherein the men may be mustered for the issue and return of such arms, accoutrements, clothing, and other stores; provided also, that it shall be at any time lawful for such justices, if they think fit, to add to such buildings quarters for such number of the permanent staff as may appear to them desirable, and cells, together with such other conveniences as may be suitable for the custody and accommodation of the stores: and no place provided for the keeping of militia stores under this or the recited Acts, nor any buildings or premises appurtenant thereto, shall be liable to be assessed to any county, borough, parochial, or other local rates or assessments; and all or any person or persons by the "Lands Clauses Consolidation Act, 1845," and this Act, authorized to sell may grant leases instead of selling, and for such term of years as may be agreed on, and under such terms and provisions in all respects as may be agreed on, and either at rackrent or otherwise, and any fine or premium paid on the granting any such lease shall be paid and applied under the provisions of the "Lands Clauses Consolidation Act, 1845," as if the same had arisen from a sale made by the party making the lease; and the party taking any lease for

Storehouse to be exempt from local rates.

the purposes of this Act shall be indemnified against the rent and the performance of the covenants in such lease by and out of the county rates, and the same shall be raised and paid out of the county rates in the manner after provided for the raising and payment of interest on moneys borrowed on mortgage.

3. *The Militia.*

Sect. 3. Whenever any place which shall have been provided for keeping the stores of the militia shall have become insecure, insufficient, or unfit for that purpose, or in case the public service or convenience require the site of the same to be changed, and the justices of the peace for the county at general or quarter sessions assembled as aforesaid shall have so determined, the persons in whom such place may be vested, upon service upon them of an order made at any Court of quarter sessions of the peace, setting forth that another and more convenient and proper place has been provided for the purpose aforesaid, whereby the place theretofore provided has become useless, shall proceed forthwith, in such manner as they shall think best, to sell and convey the same to any purchaser thereof, freed and discharged from the uses or trusts to which it had theretofore been subject, and shall give receipts and acquittances for the purchase money thereof, and shall pay over such money, after deducting thereout all costs and charges attending such sale, unto the treasurer of such county, to be by him applied and paid towards the cost of purchasing any ground for the purpose of building, or of purchasing, building, rebuilding, enlarging, altering, improving, or fitting up any place, buildings, or premises for the purposes aforesaid, under the powers of this Act, and the residue of such purchase money (if any) shall be invested in the public funds, and the interest thereof applied in aid of the rate of such county, according as the justices of the same, assembled as aforesaid, may direct; provided that no person purchasing any place so sold as aforesaid shall be bound to inquire into any circumstances relating to the sale thereof, nor be bound to see to the application nor be answerable for the non-application or misapplication of the purchase moneys; and when and as soon as the persons in whom such place shall have been so vested as aforesaid shall have paid to the said county treasurer the clear proceeds arising from such sale, and shall have procured from such treasurer his receipt for the same, then and from thenceforth such persons shall be forthwith discharged from all liability, claim, or demand in respect of the said place, and of the proceeds arising from the sale thereof.

Sale of place which is not required.

Sect. 4. The sums that may be required for the hire, purchase, enlargement, alteration, building of, or addition to any such place, in case the same shall be approved by the said lord lieutenant and colonel or commandant, shall, together with the sums required for the cost of fuel and other necessary expenses incidental to the use and maintenance of the premises, be paid by the treasurer of such county out of any moneys in his hands arising from county rates; or if such treasurer shall at any time not have sufficient moneys in his hands, the justices of such county, in their general or quarter sessions assembled, are hereby authorized and required, as soon as may be after receiving notice that such moneys are or will be required, forthwith to cause the same to be raised by such additional county rate as shall in their judgment be sufficient; and the moneys so raised, according to the laws in force for the time being relating to county rates, shall be applied accordingly.

Expense of store-house, how to be provided for.

Sect. 5. In order to distribute over a term of years the expenses of purchasing, building, enlarging, or altering such place as aforesaid, hereby directed to be paid out of the county rate, the justices of such county in their general or quarter sessions assembled may, if they think fit, borrow all or any part of the money necessary for the aforesaid purposes upon mortgage of the rates of such county; and every such mortgage may be in the form in the schedule (A.) to this Act annexed, or to

Power to borrow on mortgage of the county rates.

3. *The Militia.*

the like effect, and shall be executed by the chairman and any two of the justices present at the general or quarter sessions at the time being, and shall be effectual for securing to the person advancing the sum in such mortgage expressed, his executors, administrators, and assigns, the repayment thereof, with interest after the rate, at the times and in the manner in such mortgage specified; and any person entitled to any such mortgage may transfer his right and interest therein to any other person, such transfer being made according to the form in schedule (B.) to this Act annexed, or to the like effect; and the persons to whom such mortgages or the transfers thereof are made, their executors and administrators, shall be creditors upon the rates and funds thereby expressed to be charged, in an equal degree one with another according to the respective sums in such mortgages mentioned to be advanced by them.

Justices to provide for interest on mortgages and repayment of principal.

Sect. 6. The said justices in general or quarter sessions assembled shall in every year provide for and cause to be paid out of the county rate, in the manner and at the times in such mortgages specified, the moneys required for the time being to pay the interest on the several sums borrowed under this Act or the first-recited Act, and then unpaid, and shall also set apart and appropriate a further sum, not being less than one thirtieth part of the principal sum originally borrowed upon such mortgages, and shall apply the same in the repayment of so much of the said principal sums then unpaid as it will extend to discharge, year by year, until the whole of such principal sums have been repaid; and the said justices shall, by agreement with the parties entitled to such mortgages, or, in default of agreement, by such other means as they deem most equitable and convenient, determine the order of priority in which the several sums advanced shall be repaid.

Power to re-borrow.

Sect. 7. It shall be lawful for the said justices, with the consent of the parties entitled to such mortgages, to pay off from time to time any of the moneys so borrowed as aforesaid, and to re-borrow from time to time the sums necessary for that purpose, but so nevertheless that all moneys borrowed under this or the first-recited Act shall be repaid within thirty years from the time of first borrowing the same.

Sect. 8. [Mortgages under former Acts saved.]

Acts done and contracts made by deputy lieutenants shall be valid.

Sect. 9. All acts done by the deputy lieutenants of any county for or with reference to the providing of a place for keeping the militia stores, under any of the Acts heretofore in force, shall be deemed good and valid, and all contracts, covenants, and leases made by them for the said purposes, and under the powers of the said Acts, are hereby confirmed: Provided, that the justices of such county shall be deemed to be substituted for the deputy lieutenants as the contracting parties thereto, and such contracts, covenants, and leases shall be respectively construed and put in force as if the same had originally been made and entered into by and with such justices: Provided also, that in the case of any lease subsisting at the time of the passing of this Act, it shall be lawful for the justices of the county assembled as aforesaid, with the consent of the lessors or their representatives, and in such manner and upon such terms as may be mutually agreed upon, to determine such lease, and such justices are hereby authorized to do all such acts as may be necessary for carrying into effect such agreement and the avoidance of such lease.

Powers given by this Act to extend to militia of the City of London.

Sect. 10. All and every the powers, authorities, and directions in and by this Act given to or vested in the lords lieutenant, deputy lieutenants, and treasurers of counties, and the justices of the peace in their general or quarter sessions assembled shall extend to and include the commissioners of lieutenancy for the City of London and their treasurer for the time being, so far as the same may be applicable to the militia of the said city:

Sect. 11. And whereas there are certain corporate towns and places not liable by law to the payment of county rates, but to which the provisions of the Acts relating to the militia in other respects apply, and it is just that such towns and places should contribute in fair and rateable proportion to the expenses incurred for the efficient maintenance of the militia: be it therefore enacted, that a proportionate part of the expense to be incurred or which may have been incurred by the counties subsequently to the passing of the Act of the fifteenth and sixteenth years of her present Majesty, chapter fifty, in providing, building, enlarging, or altering places for militia stores, and of the expenses incident to the use and maintenance of the premises, shall be paid and borne, in manner hereinafter provided, by all boroughs incorporated under the Act of the sixth year of king William the fourth, chapter seventy-six, or any Act amending the same, or under the provisions of any charter granted or to be granted under any of such Acts, and which boroughs are not liable by law to the payment of county rates.

3. *The Militia.*

Municipal boroughs exempt from county rate to contribute in due proportion.

Sect. 12. In order to determine the proportion to be contributed by any such borough to the expenditure for the purposes aforesaid of the county in which such borough is locally situated, the justices of every such county are hereby authorized and required at some general or quarter sessions held by them within six calendar months after the passing of this Act, and the council of every such borough are authorized and required at some meeting of the council to be held within three months after the passing of this Act, to appoint respectively two justices of such county and two members of such council, which said four persons shall, as soon as conveniently may be after their appointment, meet together, and shall jointly determine and award the respective proportions in which the said county and borough shall contribute to the expenditure incurred or to be incurred under the recited Acts respectively or this Act, according to the respective annual values of the property as rated to the relief of the poor within such borough, and of the property as rated to the relief of the poor and chargeable to the county rate within such county.

Mode of assessing the proportions payable by the boroughs (a)

Sect. 13. The said four persons shall certify the sum so found by them to be contributable by such county and borough respectively, by an award in duplicate under their hands and seals, and shall transmit one copy of such award to the clerk of the peace for the county, and the other copy thereof to the town clerk of the borough, who shall respectively keep the same in their custody, and shall allow all persons contributing to the county rates or borough rates (as the case may be) to inspect and take copies of or extracts from the same, at all reasonable hours, without fee or reward, and such award shall, until revoked as hereinafter provided, be final and conclusive.

Manner in which the award is to be made.

Sect. 14. In case the said four persons, or any of them, shall not be appointed as hereinbefore provided, or, being appointed, shall be unable to agree together as to the proportion of such contribution, or shall neglect to meet together, or fail to make any award within three months from the time of the appointment of the two persons last appointed, it shall be lawful for one of her Majesty's principal secretaries of state, and he is hereby authorized, upon the memorial of the justices of such county at their general or quarter sessions assembled, to appoint one competent person to act as arbitrator between such county and borough respectively, and such arbitrator shall be empowered to determine, upon the basis of the annual value of property as assessed as aforesaid, the proportion of expenditure which such borough ought to contribute, and he shall make his award upon the matter so determined under his hand

Arbitrator to be appointed in default of agreement.

(a) See also the 18 & 19 Vict. c. 57, s. 1, *post*, 975.

3. *The Militia.*

and seal in duplicate, and shall transmit the several copies thereof to the clerk of the peace and town clerk, who shall perform the same duties as before provided in respect thereof, and any such award, until revoked as hereinafter mentioned, shall be final and conclusive.

Vacancies in arbitrators to be supplied.

Sect. 15. In case of the death or inability to act of any such four persons or of such arbitrator, as the case may be, the vacancy shall be supplied by the justices, or the council, or the secretary of state by whom the person so dying or unable to act was appointed, within three months after such vacancy has occurred, and so from time to time.

Power to inspect rates.

Sect. 16. All persons appointed under this Act for the purpose of determining the respective proportions contributable by any counties or boroughs may, without fee or reward, inspect or take copies or extracts of and from all county or borough rates, or rates made for the relief of the poor in any place whereto their inquiry extends, and which they may think necessary to be examined, and any person having the care or custody of any such rate who shall refuse to permit such inspection, or the taking of copies or extracts as hereby authorized, shall be liable on conviction to a penalty not exceeding £10.

Penalty.

The borough treasurer to pay the sums awarded to the county treasurer.

Sect. 17. The sum or sums which shall be determined, in accordance with such award as aforesaid, to be contributable by any borough to the expenditure incurred or to be incurred by the county under this or the recited Acts or either of them in respect of any place for militia stores, and for their use and maintenance, shall be paid from time to time by the treasurer of such borough to the treasurer of the county, upon a warrant under the hands and seals of any two of the justices present at the general or quarter sessions of the county, and such payment, for which a receipt shall be given by the treasurer of the county, shall be made from time to time out of the borough rate or borough fund of such borough, or in case at any time the moneys arising from such rate or fund then in the hands of such treasurer shall not be sufficient for the purpose, the council of such borough shall forthwith cause the sum or further sums so required to be raised by means of a borough rate, and to be paid over, according to the exigency of the said warrant, to the treasurer of the county.

Borough may borrow money on mortgage.

Sect. 18. In order to distribute over a term of years the proportion payable by any borough of the expense incurred or to be incurred by the county in purchasing, erecting, enlarging, or altering a place for militia stores, it shall be lawful for the council to borrow any sum of money, not exceeding the proportion so payable by them, and, for the purpose of securing such money, to mortgage, with the consent of three or more commissioners of her Majesty's treasury, any part of the lands, tenements, and hereditaments of such borough, and to repay the money so borrowed, and the interest thereof, according to the terms of such mortgages, out of the borough fund or borough rate, and from time to time to reborrow, for the purpose of paying off any sums so borrowed; provided always, that the whole of the moneys so borrowed, with the interest thereon, shall be repaid within the period of thirty years from the time of first borrowing the same.

How mortgages are to be made.

Sect. 19. Such mortgages shall be made in the form in schedule (A.) to this Act annexed, *mutatis mutandis*, or to the like effect, and shall be effectual for securing to the person advancing the sum in such mortgage expressed, his executors, administrators, and assigns, the repayment thereof, with interest, according to the terms of such mortgage, and any person entitled to any such mortgage may transfer his right and interest therein to any other person, such transfer being made according to the form in schedule (B.), *mutatis mutandis*, or to the like effect.

Conveyances and other instru-

Sect. 20. All conveyances, leases, mortgages, awards, contracts, re-

ceipts, and other instruments made for the purpose of carrying into effect the provisions of this Act shall be exempt from stamp duty.

Sect. 22. At any time, not being less than three years after the date of any award made under this Act, it shall be lawful for one of her Majesty's principal secretaries of state, upon the memorial of the justices of any county in general or quarter sessions assembled, or of the mayor, aldermen, and burgesses of any borough at a special meeting of their council agreed to, if he shall be satisfied that adequate reasons exist for a readjustment of the proportions contributable by such county and borough respectively, to declare by writing under his hand that such award shall be revoked and that a new award shall be made in the premises, and thereupon the same proceedings shall be had and taken with respect to the appointment of persons to determine such proportions, and of an arbitrator if necessary, and with respect to the making of the award and carrying the same into execution, and all proceedings consequent thereupon in like manner as are hereinbefore directed with respect to such matters respectively in the first instance.

Sect. 29. The provisions of this Act with respect to boroughs incorporated under the Acts relating to municipal corporations, and not liable to county rates, and with respect to the mode of determining the proportion of the expense incurred by counties under this or the recited Acts which shall be contributable by such boroughs, shall apply, *mutatis mutandis*, to every franchise, liberty, borough, or place not liable by law to the payment of county rates, but not being such municipal borough; and the proportion of the expenditure incurred or to be incurred by the county in which any such franchise, liberty, borough, or place is locally situated which shall be contributable by such franchise, liberty, borough, or place shall be jointly determined by two justices of such county appointed as aforesaid, and two justices of or persons appointed to act on behalf of such franchise, liberty, borough, or place by the justices thereof at any meeting specially convened for that purpose, or if there be not two justices then by the mayor or chief municipal officer thereof, or in default of any such appointment or of the agreement or determination of the persons so respectively appointed, then by an arbitrator to be nominated as hereinbefore provided, and the amount of contribution so determined shall be paid out of the liberty rate or other local rate in the nature of a county rate leviable within such franchise, liberty, borough, or place, and the other provisions hereinbefore contained with respect to the revocation of the award, and to the borrowing of money, and other matters incidental thereto, shall apply in like manner to such franchise, liberty, borough, or place as aforesaid.

Sect. 34. Innkeepers and others who, according to the provisions of the Act for punishing mutiny and desertion, are liable to have soldiers billeted upon them, shall in like manner be subject to have the permanent staff of the militia, when disembodied, billeted upon them, and in default of their providing convenient lodging, with fire and candle, as prescribed in the ninety-fourth section of the Act of the forty-second year of George the Third, chapter ninety, shall be liable to the penalties imposed upon civil subjects offending against the laws relating to billets as prescribed by the said Acts for punishing mutiny and desertion.

Sect. 45. Every militiaman raised under the recited Act of the fifteenth and sixteenth years of her present Majesty, chapter fifty (not labouring under any certified infirmity or incapacity), who shall not appear at the time and place appointed for his being exercised (notice having been given as by law required), or who, having joined the regiment, battalion, or corps to which he belongs, or any company or companies or any detachment or division thereof, shall desert or absent himself during the time of any such exercise, shall be deemed a deserter, and, upon conviction,

3. The Militia.

ments exempted from stamp duty.

Award may be revoked in certain events.

Proportions contributable by franchises and places exempt from county rates.

Permanent staff to be billeted.

Punishment of men not attending, or absenting themselves during training, and not taken till after.

3. *The Militia.*

tion thereof before any justice of the peace, be liable to forfeit and pay a sum not exceeding £10; and if such penalty shall not be immediately paid, the said justice shall sentence such militiaman to the house of correction or to the common gaol, there to be imprisoned, with or without hard labour, for any period not exceeding three months, unless the said penalty be sooner paid; provided, that any information may be laid against such militiaman under this section at any time within the period of his engagement in the militia.

Provision for apprehension of militiamen not attending or absenting themselves during training.

Sect. 46. The commanding officer of any regiment, battalion, or corps of militia shall notify to the secretary at war, and to the constables, tithingmen, headboroughs, or other officers of the parishes, tithings, and places in which militiamen reside who have not attended training and exercise, or who may have absented themselves during the time of training and exercise of their respective regiments, battalions, or corps, the names and descriptions of all such militiamen who have so absented themselves; and it shall be lawful for any constable, tithingman, headborough, or officer, or for any officer or soldier in her Majesty's service or in the militia, to apprehend or cause any such militiaman to be apprehended, and to bring him or cause him to be brought before any justice of the peace, at any time within the period of his engagement in the militia, to be dealt with as hereinbefore mentioned, or to be committed to safe custody until an escort can be sent for him, if such regiment, battalion, or corps be then out for training and exercise; and such justice shall transmit a report, in the form prescribed in schedule (C.) annexed to this Act, to the secretary at war, and the secretary at war shall transmit to such justice an order for the payment to the person or persons by whom such militiaman was apprehended and secured of such sum not exceeding 20s. as the secretary at war may think fit.

Penalty for inducing militiamen to absent themselves, or harbouring or employing militiamen absenting themselves.

Sect. 47. Any person who by words or other means shall persuade any militiaman improperly to absent himself from his duty, and every person who shall assist or procure any such volunteer improperly to absent himself as aforesaid, or shall conceal, employ, or continue to employ any such volunteer, knowing him to be so improperly absent, shall for every such offence forfeit and pay a sum not exceeding £20.

Penalty for buying arms or militia stores.

Sect. 48. The one hundred and second section of the Act of the forty-second year of king George the third, chapter ninety, shall be repealed, and if any person shall knowingly and wilfully buy, take in exchange, conceal, or otherwise receive any militia arms, clothes, or accoutrements, or any such articles belonging to a militiaman as are generally deemed regimental necessities according to the custom of the army, being provided for the soldier, and paid for by deductions out of his pay, or any public stores or ammunition delivered for the militia, upon any account or pretence whatsoever, contrary to the true intent and meaning of this Act, and of the other Acts in force relating to the militia, the person so offending shall for every such offence forfeit and pay not exceeding £10; and if such penalty be not immediately paid, and the offender shall not have sufficient goods and chattels whereon to levy the same, the justice by whom such offender was convicted shall commit him to the house of correction or common gaol, there to be imprisoned, with or without hard labour, for any period not exceeding six months, unless the said penalty be sooner paid.

Recovery of penalties.

Sect. 49. All offences for which any pecuniary penalty or forfeiture is by this Act imposed shall and may be heard and determined by any justice of the peace in or near to the place where the offence shall be committed, or where the offender may at any time happen to be; and all such penalties and forfeitures, and also the reasonable costs attending the prosecution, to be duly ascertained and awarded by such justice, shall and may be enforced and recovered in the same manner as any

pecuniary penalties may be recovered in England or Wales under the provisions of the 11 & 12 Vict. c. 43.

3. The Militia.

Schedules.

Application of certain penalties.

Sect. 50. One moiety of every pecuniary penalty or forfeiture imposed under this Act upon any person duly convicted of buying, taking in exchange, concealing or otherwise receiving contrary to law any militia arms, clothes, accoutrements, or regimental necessities belonging to any militiaman, or any public stores or ammunition for the service of the militia, and every pecuniary penalty or forfeiture imposed under this Act upon any person assisting, procuring, or persuading any militia volunteer improperly to absent himself from his duty, or concealing, employing, or continuing to employ any such volunteer, knowing him to be so improperly absent, shall go to the person who shall inform or sue for the same, and the other moiety, or where the offence shall be proved by the person who shall inform then the whole of the penalty, shall be paid over and applied in such manner as the secretary at war shall direct, anything in any other Act to the contrary notwithstanding; and every justice who shall adjudge any such penalty or forfeiture shall, within four days at the furthest, report the same and his adjudication thereof to the secretary at war.

Sect. 51. All penalties imposed by this Act upon militiamen (except the deductions from bounty, which shall be brought to public credit), shall be paid to the commanding officers of the respective regiments, battalions, or other bodies of militia of the respective counties to which the militiaman belongs, and shall be made and accounted for as part of the public stock of such regiment, battalion, or other body of militia respectively.

Application of penalties on militiamen.

Sect. 57. This Act may be cited for all purposes as the "Militia Law Amendment Act, 1854."

Short title.

Sect. 58. The word "county" in this Act shall include any riding or division of a county, having a separate commission of the peace, unless there be something in the subject or context repugnant to such construction; and the word "treasurer" in this Act shall include the treasurer of any riding, division, or portion of a county for which there shall be a separate treasurer, although such riding, division, or portion of a county shall not have a separate commission of the peace.

Interpretation.

SCHEDULES TO THIS ACT.

SCHEDULE (A.).

Form of Mortgage.

By virtue of the "Militia Law Amendment Act, 1854," we A. B. the chairman, and C. D. and E. F. justices of the peace, assembled at the Court of general or quarter sessions of the peace for the county of [or the mayor, aldermen, and burgesses of the borough of], or as the case may be], in consideration of the sum of [paid to the treasurer of the said county [or borough] by A. B. of] for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the [here describe the rates or property intended to be mortgaged] as the said sum of [doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said], to hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of [with interest at]

3. *The Militia.*

per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid within not less than years from the date hereof).

Schedules.

In witness whereof we have hereunto set our hands and seals [or given under our corporate seal], this day of , 18 .

(L. S.)

SCHEDULE (B.).

Form of Assignment of Mortgage.

I, A. B., of , in consideration of the sum of paid to me by C. D. of do hereby assign to the said C. D., his executors, administrators, and assigns, a certain mortgage, numbered , made by the justices of the county of [or the mayor, aldermen, and burgesses of the borough of , or as the case may be], bearing date the day of , for securing the sum of and interest thereon [or (if such transfer be by indorsement),* the within security], and all my right and interest to and in the moneys thereby secured, and the rates (or lands, tenements, and hereditaments) thereby assigned.*

In witness whereof I have hereunto set my hand and seal this day of 18 .

(L. S.)

SCHEDULE (C.).

Report.

Descriptive return of committed to confinement at on the day of as an absentee from the training of the regiment of Militia.

Ago.

Height.

Complexion.

Hair.

Eyes.

Marks.

Probable date of enrolment, and where.

Probable date of absenting himself, and from what place.

Name, occupation, and address of the person by whom apprehended (a).

Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds, and whether committed for safe custody only, or as a deserter under this Act, and if so, for what period (a).

Feet.

Inches.

I do hereby certify that the prisoner has been duly examined before me as to the

(a) It is important for the public service, and for the interest of the prisoner, that this part of the return should be accurately filled up, and

the details should be inserted by the magistrate in his own handwriting, or, under his direction, by his clerk.

circumstances herein stated, and has declared in my presence that he (a)
absent himself from the before-mentioned corps.

3. The
Militia.

Signature and address of magistrate.

Signature of prisoner.

Signature of informant.

*I certify that I have inspected the prisoner, and consider him (b)
for military service.*

*Signature of military medical officer, or
(c) private medical practitioner.*

By the 18 & 19 Vict. c. 57, entitled "An Act further to Amend the Laws relating to the Militia in England" (16th July, 1855), it is enacted as follows:—

Sect. 1. It shall be lawful for one of her Majesty's principal secretaries of state, if he see fit, upon the memorial of the justices of the peace of any county at their general or quarter sessions assembled or of the council of any borough, to enlarge the time within which such justices or council are required respectively to appoint two justices and two members of council under section twelve of the Militia Law Amendment Act, 1854, and where justices and members of council have been duly appointed under such Act or within any enlarged time granted under this Act, it shall be lawful for such secretary of state, if he see fit, upon the like memorials of the justices of the county at their general or quarter sessions assembled, and of the council of the borough, on behalf of which county and borough respectively justices and members of council have been appointed, to enlarge the time within which they are required to make their award under the said Act.

Secretary of state may enlarge time for appointment of persons to apportion contribution between county and borough, and for making award.

Sect. 2. Where it appears to the justices and members of council appointed under the Militia Law Amendment Act, 1854, or under such Act as amended by this Act, for the purpose of determining and awarding the respective proportions in which any county and borough shall contribute to the expenditure in the said Act mentioned, or to any arbitrator duly appointed for the like purpose, that the respective annual values of the property rateable to the relief of the poor as rated thereto in the county and borough are not ascertained upon a uniform principle of valuation, so as to constitute a fair basis upon which to calculate the proportions in which the county and borough should contribute as aforesaid, such justices and members of council or arbitrator (as the case may be) may determine and award such respective proportions according to what may appear to them or him to be the actual annual values at which the property rateable in the county and borough respectively to the relief of the poor ought to be rated thereto, but without regard to the respective values at which such property is in fact so rated; and in determining such proportions as aforesaid the value of the property in extra-parochial places as well in boroughs as in counties, as such property if rateable to the relief of the poor would be rated thereto, shall be taken into account as if the same had been actually rateable to such relief.

Where the poor rate in the county and borough is not assessed upon a uniform principle, the proportions of contribution may be adjusted without regard to the poor rate valuation.

(a) Insert "did" or "did not," as the case may be.

(b) Insert "fit" or "unfit," as the case may be; and if unfit, state the cause of unfitness.

(c) No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it is shown that his services were not available.

3. *The Militia.*

Boroughs situate in more than one county to contribute to each in proportion to the rateable value of the part within the same.

Sect. 3. When any borough is situate in more than one county, such borough shall be liable to contribute to the expenditure aforesaid in each such county, and the proportions which such borough shall contribute to such expenditure in each such county shall be determined and awarded by justices appointed for the county and members of council appointed for the borough, or by an arbitrator, in like manner as in the case of a borough wholly within the county, but the proportion to be contributed by the borough shall be determined and awarded with reference to the value of the property rated to the relief of the poor within that part only of the borough which is situate in the county by which the expenditure is incurred, and the contributions so awarded shall be raised and paid in like manner as if the whole borough were within the county; but in case a borough rate be made for raising any such contribution, or repaying any money borrowed for the purpose of such contribution, or paying any interest on any such money or any expenses incident to borrowing the same, such rate shall be raised in that part only of the borough which is in the county to which the contribution is required to be made: Provided always, that this enactment shall not apply to the city or county of the city of Bristol, but the said city and county shall contribute to the expenditure aforesaid in the county of Gloucester, as if wholly situate in such county: Provided also, that this enactment shall not affect the provision in section twenty-five of the Militia Law Amendment Act, 1854, concerning the city of Lincoln and borough of Stamford.

Foregoing provisions to extend to franchises.

Sect. 4. The foregoing provisions concerning boroughs shall apply to all franchises, liberties, and places not being by law liable to the payment of county rates made for the county at large, and the expressions, "borough," "council," "members of council," and "borough rate," shall respectively be construed as including any such franchise, liberty, or place, the justices, mayor, or municipal officer authorized under section twenty-nine of the Militia Law Amendment Act, 1854 (a), to appoint two justices or persons to act on behalf of such franchise, liberty, or place, the justices or persons so appointed, and the liberty rate or other local rate in the nature of a county rate leviable in such franchise, liberty, or place.

The word "Borough" to include any city or town named in schedules (A.) and (B.) of 5 & 6 Will. 4, c. 76, although such should be a county of itself.

Sect. 7. In the construction of the Militia Law Amendment Act, 1854, and of this Act, the word "borough" shall mean any city, borough, port, or town corporate, named in either of the schedules (A.) and (B.) to the 5 & 6 Will. 4, c. 76, or to which the powers and provisions of that Act have been or may be extended, notwithstanding any such city, borough, or town may be a county of itself; and the powers and provisions of the said Militia Law Amendment Act, 1854, and this Act, applicable to boroughs locally situate in counties, shall extend to every such city, borough, or town, being a county of itself which in section nineteen of the 42 Geo. 3, c. 90, is, for the purposes of that enactment, united with or named in connection with a county or riding, in like manner as if locally situate in the county or riding in connection with which it is named.

By the 23 & 24 Vict. c. 94, entitled, "An Act to Amend the Laws relating to the Militia" (13th August, 1860), it is enacted as follows:—

Sect. 1. [Power to unite portions of militias of two or more counties to form an artillery corps.]

Appointment of committee for providing store-house for united militia artillery corps in England.

Sect. 2. Where any such united corps of militia artillery is formed in England, the justices of every county, riding, division, or place from which such united corps is formed shall, at the general or quarter sessions next after the said order has been notified to them by the lord lieu-

tenant, elect the number of justices mentioned in such order, to be with the justices elected in like manner for every other such county, riding, division, or place, a committee for providing and maintaining such storehouse as aforesaid :

3. *The Militia.*

In case any member of any such committee die, resign, or become incapable to act, the justices for the county, riding, division, or place for which he was elected, at any general or quarter sessions for such county, riding, division, or place, shall elect some other justice in his place, but notwithstanding any vacancy in any committee the continuing members may act as if no such vacancy had occurred.

Sect. 3. Every such committee shall within one month after their election assemble at some convenient place to be named in a notice to be given by two or more of the members thereof to the several members so elected, such notice to be given to each member personally or left at his place of abode, or transmitted through the post office seven days at least before the time appointed for such meeting, and the said committee may adjourn the said meeting from time to time and from place to place and meet when and so often as they think necessary, and they shall at their first meeting elect one of their members to be their chairman, who shall preside at all meetings at which he is present, and in case of his absence from any meeting the members present shall elect one of their number to be chairman for the meeting, who shall preside at the meeting :

Meetings of committee.

To constitute a meeting of the committee there shall not be less than three members, except for adjournment, which may be made by less than three, and every question shall be determined by a majority of votes, the chairman (whether permanent or temporary) having a vote, and, in the event of equality of votes, having a second or casting vote.

Sect. 4. The said committee or any three of them shall have all the powers for providing, repairing, enlarging, altering, and improving such storehouse as aforesaid as are or may be given to the justices of a county for providing, enlarging, altering, and improving any storehouse for keeping the arms and other stores belonging to any regiment of militia of their county ; and all the provisions of such Act auxiliary to any such powers, and in relation to any such storehouse, shall extend and apply to and in the case of the powers conferred by this enactment, and any storehouse to be provided, altered, enlarged, or improved thereunder ; and any lands to be purchased for the purposes of this Act shall be conveyed to such persons, being not less than five in number, and in such manner as the committee purchasing the same may direct, in trust for the purposes of this Act, and any conveyance to be so made shall have the like force and effect as a conveyance made under section eighty-one of "The Lands Clauses Consolidation Act, 1845."

Powers of committee.

Lands purchased for purposes of this Act to be conveyed to trustees.

Sect. 5. [Power for the appointment of new trustees in case of death, etc.]

Sect. 6. The said committee shall from time to time certify to the treasurer of each county, riding, division, or place for the payment of the amount to be contributed by such county, riding, division, or place towards the expenses incurred by such committee, according to and in proportion to the number of men ordered to be contributed by such county, riding, division, or place to the united corps of artillery ; and every treasurer to whom such amount is so certified shall raise such amount out of the same funds and in the same manner as sums required for the expenses of the storehouse for the militia of such county, riding, division, or place, and pay the same in manner directed by the certificate of the said committee, and every such certificate shall be signed by the said committee or three or more of them.

As to payment of expenses incurred by committee.

3. *The Militia.*

Provision for storehouses for united militias.

Sect. 8. Where the militia of any county, riding, division, or place in England is united with the militia of any adjoining county, riding, division, or place, the enactments hereinbefore contained for providing for the keeping of the arms, accoutrements, clothing, and stores belonging to a united corps of militia artillery, and concerning the expenses of providing a storehouse for such united corps, and incidental to the use and maintenance thereof, shall be applicable in the case of the militia united as aforesaid, save that the expenses shall be defrayed in proportion to the quotas fixed for the respective counties, ridings, or places of which the militias are united.

Payments to counties in respect of expenses of providing quarters for permanent staff.

Sect. 10. If the lord lieutenant or other chief governor or governors of Ireland shall deem it expedient that the whole or any number of the permanent staff of the militia of any county or county of a city, or of the united militia of any counties, or of any united artillery corps, should be provided with quarters in the storehouse of such militia, united militia, or united artillery corps, it shall be lawful for the grand jury of such county or counties, or for the town council of the borough of Dublin, Cork, or Limerick, as the case may be, to provide by presentment the cost of such quarters; and in every such case, and also where, in England, in any county, riding, division, or place, the justices in general or quarter sessions, or any committee appointed under this Act, or in Scotland the commissioners of supply, add to the buildings provided or to be provided for keeping the arms and stores of the militia quarters for such number of the permanent staff as the secretary of state shall deem expedient to be quartered as a guard for the arms and stores, it shall be lawful for the secretary of state from time to time, out of moneys to be provided by Parliament for this purpose, to cause to be paid to the treasurer of such county, riding, division or place, or such commissioners of supply, such yearly sum as the secretary of state may have agreed so to pay before such quarters are provided, to be applied in aid of the rates or assessments out of which or of moneys raised on the security of which the expenses of providing such quarters have been defrayed, and where such expenses have been incurred on account of any united corps of militia or united militias, such sum shall be apportioned by the secretary of state between or among the counties, ridings, divisions, or places which may have contributed to such expenses in proportion to its contribution thereto, and be paid to the treasurers of the respective counties, ridings, divisions, or place, or the commissioners of supply of the respective counties accordingly.

Provision in respect of counties who have already provided accommodation for permanent staff.

Sect. 11. Where before the passing of this Act any quarters shall have been provided for the permanent staff of the militia by any county, riding, or place, it shall be lawful for the secretary of state, upon being satisfied of the sufficiency of such quarters, to approve thereof in the same manner as if the same had been erected with his sanction subsequent to the passing of this Act, and it shall thereupon be lawful for the secretary of state to cause to be paid to the treasurer of such county, riding, or place such yearly sum as he may think fit, in the same manner and to be applied for the same purposes as if under the provision hereinbefore contained such sum had been agreed to be paid by him before such quarters had been provided.

Treasurers of counties to be accountable to treasurers of boroughs for payment by secretary of state.

Sect. 12. The treasurer of every county, riding, division, or place receiving any such payment from the secretary of state shall be accountable in respect thereof to the treasurer of every borough which may have contributed to the expenses of providing the quarters in proportion to its contribution to such expenses.

Borough justices may administer oaths to militia volunteers.

Sect. 13. The oath which under the Act of the session holden in the fifteenth and sixteenth years of her Majesty, chapter fifty, is to be taken by every volunteer raised as in the said Act mentioned, may be adminis-

tered by any justice of the peace for any city or borough, county, riding, or place where such volunteer may happen to be.

4. *Volunteers.*

Sect. 15. And whereas by section twelve of the Act of the session holden in the twenty-second and twenty-third years of her Majesty, chapter thirty-eight, after providing that every deserter from the militia, and every person who in respect of any offence against the militia laws is deemed a deserter, may be tried by a regimental court-martial, or may be tried summarily by any justice or justices of the peace as therein mentioned, it is enacted, that it shall be lawful for the secretary at war to direct in which of the aforesaid modes any such deserter shall be tried: so much of the said section as provides that it shall be lawful for the secretary at war to direct in which of the aforesaid modes any such deserter shall be tried shall be repealed; and every such deserter, and every such person who in respect of any offence against the militia laws is deemed a deserter, shall be tried summarily by any justice or justices of the peace having jurisdiction under the said section, unless it be shown to such justice or justices that the secretary at war has ordered such deserter or person to be tried by a regimental court-martial under the provision hereinafter contained; and it shall be lawful for such secretary at war, by any general or special directions or regulations, to order any such deserter or person, or any class or description of such offenders, with reference to the time or circumstances of their being apprehended or otherwise, to be tried by regimental court-martial according to the provisions of the said section mentioned for such trial, and every such deserter or person to whom such desertion or regulation is applicable shall thereupon be tried and dealt with accordingly.

So much of sect 12 of 22 & 23 Vict. c. 38 as provide the modes in which deserters shall be tried repealed.

Deserters etc. may be tried summarily by justices unless secretary at war shall order otherwise.

By the 29 & 30 Vict. c. 60, s. 6, all persons receiving pay as members of the permanent staff of any militia regiment shall be subject to the provisions of the "Mutiny Act" and articles of war for the time being in force, and shall be entitled to be billeted in like manner as officers and soldiers of her Majesty's army, and the innkeepers and others who are liable to have officers and soldiers billeted on them shall provide the members of the permanent staff with convenient lodging, fire, and candle, and in default thereof to be liable to the penalties imposed upon civil subjects offending against the laws relating to billets as prescribed by the "Mutiny Act" for the time being in force.

It having been held that a soldier might be indicted for disobedience to an order of sessions, for maintenance of a bastard child, and be imprisoned (*R. v. Ferrall*, 20 *L. J.* 59, *M. C.*; 15 *Jur.* 42), the Mutiny Act now provides, that no soldier or non-commissioned officer or drummer on the permanent staff of the disembodied militia shall be liable to be summoned before any justice of the peace or other authority whatever, or to be taken out of her Majesty's service, by any *capias*, writ, summons, order, judgment, process or execution issued by or by the authority of any Court; or for not supporting or maintaining, or for not having supported or maintained, or for deserting or having deserted, or for leaving or having left chargeable to any parish, township or union, any wife, or any child or children, legitimate or illegitimate, or other relation.

Arrest on criminal process.

IV. *Volunteers.*

By the 26 & 27 Vict. c. 65, entitled, "An Act to consolidate and amend the Acts relating to the Volunteer Force in Great Britain" [21st July, 1863], it is enacted as follows:—

∴ Sect. 1. This Act may be cited as "The Volunteer Act, 1863." -

4. *Volunteers.*

Short title.

Power for volunteer to quit his corps on conditions herein stated.

7. Any volunteer may, except when on actual military service, quit his corps on complying with the following conditions, namely,—

1. Giving to the commanding officer of his corps fourteen days' notice in writing of his intention to quit the corps :
2. Delivering up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property or property of his corps, issued to him :
3. Paying all money due or becoming due by him, under the rules of his corps, either before or at the time or by reason of his quitting it :

and thereupon he shall be struck out of the muster roll of the corps by the commanding officer.

If any volunteer gives such notice, and the commanding officer refuses to strike him out of the muster roll, and the volunteer considers himself aggrieved thereby, the volunteer may appeal to two justices of the peace for the county to which the corps belongs, usually acting within the petty sessional division in which the head quarters of the corps are situate, and not being members of the corps, who shall hear and determine the appeal, and may, for the purposes thereof, administer oaths and examine any person as a witness ; and if it appears to such justices that the arms, clothing, and appointments issued to the volunteer, being public property or property of his corps, have been delivered up in good order (fair wear and tear only excepted), or that he has paid or is ready to pay sufficient compensation for any damage that such articles may have sustained, and that all money due or becoming due by him under the rules of his corps, either before or at the time or by reason of his quitting it, has been paid, such justices may order the commanding officer forthwith to strike such volunteer out of the muster roll of his corps, and their determination shall be binding on all persons.

Vesting of property of corps in commanding officer *ex officio*.

Sect. 25. All money subscribed by or to or for the use of a volunteer corps or administrative regiment, and all effects belonging to any such corps or regiment, or lawfully used by it, not being the property of any individual officer or volunteer or non-commissioned officer of the volunteer permanent staff belonging to the corps or regiment, and the exclusive right to sue for and recover current subscriptions, arrears of subscriptions, and other money due to the corps or regiment, and all lands acquired by the corps or regiment, shall vest in the commanding officer of the corps or regiment for the time being, and his successors in office, with power for him and his successors to sue, to make contracts and conveyances and to do all other lawful things relating thereto ; and any civil or criminal proceedings taken by virtue of the present section by the commanding officer of a corps or regiment shall not be discontinued or abated by his death, resignation, or removal from office, but may be carried on by and in the name of his successor in office.

Appointment storehouses for arms.

Sect. 26. The commanding officer of a volunteer corps or administrative regiment, receiving any arms, ammunition, or other stores supplied at the public expense or by subscription, shall, subject to the approval of the lieutenant of the county to which the corps belongs, or in which the head quarters of the administrative regiment are situate (as the case may be), appoint a proper storehouse for the depositing and safe keeping of such arms, ammunition, or stores. Every such storehouse shall be free from all county, parochial, or other local rates and assessments. All exemptions contained in "The Gunpowder Act, 1860," or any Act amending the same, relative to storehouses, magazines, or places belonging to or held for the service of the Crown, shall extend to any storehouse appointed under the present section with the approval of the lieutenant of a county, if also approved of by one of her Majesty's principal secre-

As to exemptions in 23 & 24 Vict. c. 139.

aries of state, as a fit place for the storing of ammunition, but not otherwise.

Sect. 27. If any person belonging or having belonged to a volunteer corps or administrative regiment neglects or refuses to pay any money subscribed or undertaken to be paid by him towards any of the funds or expenses of such corps or regiment, or due under the rules of such corps, and actually payable by him, or to pay any fine incurred by him under the rules of such corps,—such money or fine shall (without prejudice to any other remedy) be recoverable from him, with costs, at any time within twelve months after the same becomes due and payable, as a penalty under this Act is recoverable, and when recovered shall be applied as part of the general fund of the corps or regiment.

Sect. 28. If any person designedly makes away with, sells, pawns, wrongfully destroys, wrongfully damages, or negligently loses, anything issued to him as a volunteer,—or wrongfully refuses or wrongfully neglects to deliver up, on demand, anything issued to him as a volunteer,—the value thereof shall be recoverable from him, with costs, as a penalty under this Act is recoverable; and he shall also for every such offence of designedly making away with, selling, pawning, or wrongfully destroying as aforesaid be liable, on the prosecution of the commanding officer of the corps or administrative regiment issuing the thing made away with, sold, pawned, or destroyed, to a penalty not exceeding £5.

Sect. 29. If any person knowingly buys or takes in exchange from any volunteer or any person acting on his behalf,—or solicits or entices any volunteer to sell,—or knowingly assists or acts for any volunteer in selling,—or has in his possession or keeping, without satisfactorily accounting for,—any arms, clothing, or appointments being public property or property of any volunteer corps or administrative regiment, or any public stores or ammunition issued for the use of any such corps or regiment,—he shall, on the first commission by him of any such offence, be liable to a penalty not exceeding £20, and shall, on a second and every other subsequent commission by him of any such offence, and on being convicted thereof in the like course of proceeding as that in which any such penalty is recoverable, be liable to a penalty not exceeding £20 or less than £5, with or without imprisonment for any term not exceeding six months, with or without hard labour.

The justices before whom any person is convicted of any offence under the present section shall transmit the conviction to the next Court of general or quarter sessions held for the county or place where the conviction is had, there to be kept by the proper officer among the records of the Court; and on the prosecution of any person for any subsequent offence under the present section, a copy of such conviction, certified by the proper officer of the corps, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and such conviction shall be presumed not to have been quashed on appeal until the contrary is shown.

Sect. 30. If any person wilfully commits any damage to any butt or target belonging to or lawfully used by any volunteer corps or administrative regiment, or, without the leave of the commanding officer of the corps or regiment, searches for bullets in or otherwise disturbs the soil forming such butt or target, he shall for every such offence be liable, on the prosecution of the commanding officer, to a penalty not exceeding £5.

Sect. 36. Any corporation, ecclesiastical or lay, sole or aggregate, any officer, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, or parochial purposes, may grant and from time to time renew any licence for the use, during any term not exceeding twenty-one years, by any volunteer corps, for the purposes of this part of this Act, of any land not exceeding four acres vested in such corpora-

4. *Volunteers.*

Recovery of subscriptions or fines.

Wrongful sale, non-delivery, etc., of public or corps property.

Wrongful buying of arms, etc., from volunteers.

As to wilful injury to butts or targets.

Power to corporations, justices, trustees, etc., to grant licence to use land.

4. *Volunteers.*

tion, officers, justices, trustees, or commissioners, subject to the following provisions:—

1. That an ecclesiastical corporation sole below the dignity of a bishop shall not make such a grant without the consent in writing of the bishop to whose jurisdiction he is subject, and of the patron of the preferment to which the land belongs, or the guardians or trustees of such patron:
2. That such a licence shall not be granted in respect of parochial property without the consent of the majority of the ratepayers and owners of property in the parish to which the same belongs, assembled at a meeting convened according to the mode pointed out by the 5 & 6 Will. 4, c. 69, and of the poor law commissioners, testified by their seal being affixed to the deed of grant, and of the guardians of the poor of the union within which the parish is comprised, or of the guardians of the poor of the parish where the administration of the relief of the poor therein is subject to a board of guardians, testified by such guardians being the parties to make the grant.
3. That where any officers, trustees, or commissioners other than parochial trustees make any such grant, it shall be sufficient if a majority or quorum authorized to act of such officers, trustees, or commissioners assembled at a meeting duly convened assent to such grant and execute the deed of grant, although they do not constitute a majority of the actual body of such officers, trustees, or commissioners:
4. That the justices of the peace may give their consent to the making of any such grant in respect of land belonging to any county, riding, or division by vote at their general quarter sessions, and may direct the same to be made in the manner directed to be pursued on the sale of the sites of gaols by the 7 Geo. 4, c. 18:
5. That in the event of any land to which any such licence relates ceasing to be used for the purposes of this part of this Act, that licence shall thereupon cease absolutely.

Power to justices to stop up or divert footpaths for purposes of this part of Act.

Sect. 37. Where a footpath crosses or runs inconveniently or dangerously near to any land purchased or acquired, or in respect of which any licence is granted, for the purposes of this part of this Act, such footpath may, with the consent of the vestry of the parish in which the same is situate, and upon the certificate of two justices that the footpath to be substituted is convenient for the public, be stopped up or diverted. All proceedings to obtain such certificate, and to stop up or divert such footpath, shall be taken in the manner in which proceedings are directed to be taken by the 5 & 6 Will. 4, c. 50, in cases where a person other than the inhabitants in vestry is desirous of stopping up, diverting, or turning a highway, or as near thereto as circumstances admit; with this exception, that the certificate of the justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public.

Proceedings to be taken as directed by 5 & 6 Will. 4, c. 50.

Power to secretary of state to make bye-laws.

Sect. 38. One of her Majesty's principal secretaries of state, with a view to the safety and convenience of the public, may make bye-laws for the regulation of shooting on grounds purchased, acquired, or used by any volunteer corps under this part of this Act, and for the prevention of intrusion thereon during the times of shooting, any such bye-laws may impose a reasonable pecuniary penalty, not exceeding £5, for any breach of a bye-law, so that the bye-law be so framed as to admit of part only of the maximum penalty being ordered to be paid; such penalties to be recoverable and applicable as penalties imposed by this Act are recoverable and applicable.

Sect. 42. Horse duty shall not be payable for any horse used six days or upwards within the period of twelve months, ending on the fifth day of April preceding the year of assessment, as follows, namely,—

4. *Volunteers.*

Horse duty.

1. Used on duty by any officer of the volunteer force or volunteer or non-commissioned officer of the volunteer permanent staff required to use a horse on duty:
2. Used for conveying any gun, or any waggon or other military carriage, in the service of the volunteer force:

such horse, in every such case, being either the property of such officer, volunteer, or non-commissioned officer or of a volunteer corps or administrative regiment, or gratuitously furnished for such use.

A certificate, signed by the commanding officer of a volunteer corps or administrative regiment, certifying that the horse therein specified has been used as aforesaid for the said number of days, shall be evidence thereof.

Sect. 43. If any commanding officer of a volunteer corps or administrative regiment knowingly gives any false certificate under this Act, he shall for every such offence be liable to a penalty not exceeding £200, to be recovered in England by action in a superior Court of law at Westminster, in Scotland by proceedings in the Court of Session, and in the Isle of Man by proceedings in any Court of competent jurisdiction, and to be applied to the use of her Majesty.

Penalty for giving false certificate.

Sect. 44. Notwithstanding anything in the rules of any friendly or benefit society, any person shall not lose any interest in the society by reason of his enrolment or service in a volunteer corps, or his engagement or service on the volunteer permanent staff; and any dispute arising between such society and person by reason of such enrolment, engagement, or service shall be deemed a dispute directed by the rules of the society to be decided by justices of the peace, according to the Acts for the time being in force relative to friendly or benefit societies.

Volunteers not to lose interest in friendly or benefit societies.

Sect. 45. Any duty or toll leviable, under any Act of Parliament passed or to be passed, at any pier, wharf, quay, landing place, or bridge, or at any turnpike gate or bar, or at any other gate or bar on a public road, shall not be demanded or taken for—

Tolls.

1. Any officer of the volunteer force, or any volunteer, or any non-commissioned officer of the volunteer permanent staff, being on march or duty, or going to or returning from the place appointed for, and on the day for, exercise, inspection, review, or other public duty, and being in uniform:
2. Any horse ridden, or used by any officer, volunteer, or non-commissioned officer as aforesaid, being on march or duty, or going or returning as aforesaid, and being in uniform:
3. Any cart, waggon, or carriage, public or private, employed only in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying, any officer, volunteer, or non-commissioned officer as aforesaid, being on march or duty, or going or returning as aforesaid, and being in uniform, with or without any conductor or driver of such cart, waggon, or carriage, or domestic servant of such officer or volunteer:
4. Any cart, waggon, or carriage, public or private, employed only in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying, any arms or baggage of any officer, volunteer, or non-commissioned officer as aforesaid, being on march or duty, or going to or returning from the place appointed for exercise, inspection, review, or other public

4. *Volunteers.*

duty, or any military stores belonging to or for the use of, or any gun belonging to or used by, the volunteer force:

5. Any horse or other beast drawing any such cart, waggon, or carriage as aforesaid.

If any person demands or takes any duty or toll in contravention of the present section,—or if any person makes any false representation respecting himself or any other person, or any animal or thing, with intent to obtain for himself or otherwise, or fraudulently obtains for himself or otherwise, any exemption under the present section,—he shall for every such offence be liable to a penalty not exceeding £5.

Pecuniary penalties to be recovered summarily.

Sect. 48. Any pecuniary penalty under this Act, the mode of recovery of which is not otherwise expressly provided for by this Act,—and any money or fine by this Act made recoverable as a penalty under this Act is recoverable,—may be recovered as follows:—

In England, in a summary way before two or more justices of the peace having jurisdiction where the offence is committed or where the offender happens to be, in manner directed by the 11 & 12 Vict. c. 43, or in case of proceedings in the city of London, or in the metropolitan police district, in manner directed by the respective enactments for the time being in force relative to summary proceedings there:

In England, where the sum adjudged to be paid on a summary conviction or adjudication, inclusive of any costs, exceeds £5, or the imprisonment awarded exceeds one month, and the person who is convicted, or against whom the adjudication is made, thinks himself aggrieved by the conviction or adjudication, the following provisions shall take effect:

1. Such person may appeal to the next Court of general or quarter sessions held not less than twelve days after the day of such conviction or adjudication for the county or place where the conviction or adjudication is had:
2. The appellant shall, within three days after the day of the conviction, and seven clear days at least before the sessions to which the appeal is to be made, give to the complainant a notice in writing of the appeal and of the ground thereof:
3. The appellant may enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned to appear personally at the sessions and try the appeal, and abide the judgment of the Court thereon, and pay any costs awarded by the Court; or where the appeal is against a conviction imposing only a pecuniary penalty, or against an adjudication for the payment of money, the appellant may deposit with the clerk of the convicting justices such sum of money as those justices deem sufficient to cover the amount of the penalty, or money adjudged to be paid, together with the costs of the conviction or adjudication, and of the appeal:
4. On such notice being given, and such recognizance being entered into, or such deposit being made, the appellant shall be liberated if in custody:
5. The Court of general or quarter sessions shall hear and determine the appeal, and shall make such order therein, with or without costs to either party, as to the Court seems fit, and in case of affirmance of the conviction or dismissal of the appeal, shall adjudge the appellant to be punished according to the conviction, or to pay money according to the adjudication, and to pay such costs as are awarded, and shall, if necessary, issue process for enforcing such judgment:
6. Where any such deposit as aforesaid is made, and the conviction or adjudication is affirmed, or the appeal is dismissed, the Court

may order the amount of the penalty or other money adjudged to be paid, together with the costs of the conviction or adjudication and of the appeal, to be paid out of the deposit, and the residue thereof, if any, to be returned to the appellant, and in any other case shall order the deposit to be returned to the appellant:

7. Where on appeal a conviction is quashed, the proper officer shall forthwith indorse on the conviction a memorandum that it has been so quashed; and whenever any copy or certificate of such conviction is made, a copy of the memorandum shall be added thereto, which shall be sufficient evidence of the conviction having been quashed in all cases where a copy or certificate would be sufficient evidence of the conviction.

But nothing in the present section respecting appeals shall affect any enactments relative to appeals in cases of summary convictions or adjudications in the city of London or the metropolitan police district.

A summary conviction or adjudication under this Act in England, or an adjudication made on appeal therefrom, shall not be quashed for want of form or be removed by *certiorari*; and a warrant of commitment on any such conviction shall not be held void by reason of any defect therein, if it is therein alleged that the person therein named has been convicted, and there is a good conviction to sustain the same.

Any pecuniary penalty recovered summarily under this Act on the prosecution of the commanding officer of a volunteer corps or administrative regiment shall (notwithstanding anything in any Act relating to municipal corporations or to the metropolitan police or in any other Act contained) be paid to the commanding officer, and be applied as part of the general fund of the corps or regiment.

5. *Yeomanry.*

Application of certain penalties.

Sect. 49. In this Act—

The term "lieutenant" of a county includes vice-lieutenant, and, as to the city of London, the commissioners of lieutenancy for the same:

Interpretation of terms.

The term "volunteer" means a non-commissioned officer or private belonging to a volunteer corps, exclusive of the permanent staff thereof:

The term "person" includes (where the case requires) a body of persons, corporate or unincorporate:

The term "Mutiny Act" means the Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, for the time being in force, and includes the articles of war made under the authority of that Act for the time being in force:

The term "appointments" includes accoutrements and equipments of every kind other than clothing.

V. *Yeomanry.*

[44 Geo. 3, c. 54; 57 Geo. 3, c. 44.]

The 44 Geo. 3, c. 54, intituled "An Act to Consolidate and Amend the Provisions of the several Acts relating to Corps of Yeomanry and Volunteers in Great Britain, and to make further Regulations relating thereto," by s. 1 repeals all the provisions of stats. 42 Geo. 3, c. 66; 43 Geo. 3, c. 121; and 44 Geo. 3, c. 18; which relate to the corps of yeomanry and volunteers in Great Britain.

44 Geo. 3, c. 54.

5. *Yeomanry.*

No toll to be demanded from yeomanry going to exercise.

By the 44 Geo. 3, c. 54, s. 13, no toll shall be demanded or taken at any turnpike gate for any horses, mares, or geldings, rode by any person belonging to any corps of yeomanry going to or returning from exercise: Provided that every such person be dressed in the uniform of his corps, and be armed and accounted according to the regulations provided for such corps, at the time of claiming the exemption.

Volunteers when assembled on invasion, etc., to receive pay and be billeted as other forces.

By the 44 Geo. 3, c. 54, s. 37, all persons enrolled in any corps of yeomanry or volunteers, when assembled on any of the occasions above stated, and doing military duty, with the approbation of his Majesty, shall be entitled to pay during the period of their so remaining assembled as aforesaid, in such manner and after such rates, according to their respective ranks and situations, and to be quartered and billeted, in like manner, in every respect, and under and subject to the same regulations as his Majesty's other forces, as far as the same shall by his Majesty be deemed applicable to yeomanry and volunteer corps.

While volunteers embodied, their families entitled to same relief as families of militia men.

Sect. 38. Whenever any corps of yeomanry or volunteers shall be so assembled or marched as aforesaid, on any invasion or appearance of an enemy in force upon the coast, or in case of any rebellion or insurrection arising or existing as aforesaid, or of riots or tumults, or for the purpose of voluntarily doing military duty under this Act, all persons enrolled and who shall join on such assembling and marching as aforesaid, and who shall leave families unable to support themselves, shall, during the period of their absence or service on military duty, be entitled to such and the like relief for their wives and families, and under such and the like circumstances, as is provided for the families of militia men when called out into actual service; and all sums which shall be paid to the wives and families of such men, under any order for that purpose, shall, upon delivery of a quarterly account of the payment thereof, certified and signed by two justices of the county in which such relief shall be given, be repaid to the overseer or parish officer, who shall have advanced the same, by the receiver-general of such county, out of any public money in his hands.

Moneys advanced to such families to be repaid to the overseers.

57 Geo. 3, c. 44.

By the 57 Geo. 3, c. 44, s. 1, persons enrolled in corps of yeomanry, when assembled and doing military duty for the suppression or prevention of riots or tumults in aid of any justices, shall be entitled to be quartered and billeted in like manner as his Majesty's forces.

By sect. 2, no officer entitled to half-pay shall forfeit the same during the time he shall serve or receive pay as captain, lieutenant, or cornet, in any corps of yeomanry, and to entitle him to his half-pay, shall take the following oath:—

I, A. B., do swear, that I had not between the _____ and the _____, any place or employment of profit, civil or military, under his Majesty, besides an allowance of half-pay, save and except my pay or allowance [as the case may be], for serving in the _____ corps of yeomanry, as captain, lieutenant, or cornet [as the case may be].

Members not liable to serve as constables.

Sect. 3. No officer, non-commissioned officer, or effective member of any yeomanry shall, during the period of his being enrolled in, and an effective member thereof, be compellable or compelled to serve the office of constable in the parish to which he belongs.

Corps of cavalry desirous of assembling under command of their own officers, the county lieutenant, with approbation of his Majesty, may

By the 44 Geo. 3, c. 54, s. 46, whenever the persons enrolled in any corps of yeomanry or volunteer cavalry, whether any infantry be attached to such corps or not, or the majority of them, when not summoned upon actual service, or voluntarily assembled for the purpose of doing military duty, and subjected to military discipline, under the provisions of this Act, shall, through their commanding officer, signify in writing to the lieutenant of the county wherein such corps shall be raised, or in case of

vacancy, or in his absence, to the vice-lieutenant or deputy-lieutenants, executing his office, their desire to assemble under the command of their own officers, at any convenient place within the same county, for the purpose of being trained and exercised for any time not exceeding fourteen days, either successively or at intervals, within the space of twelve months, and either in separate corps, or together with any other corps of yeomanry or volunteer cavalry, who shall also have signified their desire of assembling for that purpose in like manner, or with any regiment, troop or troops of his Majesty's regular forces of cavalry, in case his Majesty shall think proper to give directions to such forces for that purpose; such lieutenant, vice-lieutenant, or deputy-lieutenants respectively, in pursuance of such desire, and with the approbation of his Majesty, signified by his principal secretary of state, may make an order for assembling such yeomanry or volunteer cavalry, and likewise may direct an order to any justice of the county where such corps of yeomanry or volunteer cavalry shall be appointed to assemble, specifying the place at which, and the time during which such corps are to continue so assembled; and the justice to whom such order shall be directed shall issue his precept to the constable, or other peace officer of the place where such corps are to be assembled, for a quartering and billeting the non-commissioned officers, trumpeters or buglemen, and privates, upon such persons and in such houses, situate in or near the place or places specified in such order, as his Majesty's forces may by law be quartered and billeted upon; and from and after the receipt of such precept, such constable or other proper officer may billet them accordingly: but nothing herein contained shall extend or be construed to extend to subject any such corps to the Mutiny Act or articles of war while assembled in the manner and for the time above specified.

5. *Yeomanry.*

make an order
for that purpose.

May be billeted
in same manner
as regulars.

Sect. 44. And all arms delivered out of the public stores, or furnished at the public expense, for the use of any corps of yeomanry, shall be marked distinctly in some visible place with the letter (V.), and the initial of the county to which such corps shall belong: and in case any man shall sell, pawn, or lose any arms, accoutrements, clothing, or ammunition delivered to him, or shall wilfully damage any such arms or accoutrements, he shall for every offence forfeit not exceeding 40s.; and in default of payment, any justice residing in or near the place where the offence shall be committed, may take cognizance of the same, and commit the person convicted of such offence before him to the next gaol or house of correction, to be kept to hard labour not exceeding one week, or until he shall have paid the penalty.

Arms to be
marked.

Penalty on selling,
pawning, or
damaging them.

Sect. 45. And if any person shall knowingly and wilfully buy, take in exchange, conceal, or otherwise receive any arms, accoutrements or clothing, or any public stores or ammunition delivered for the use of any corps of yeomanry, he shall forfeit for every offence £10; and in default of payment and of sufficient goods and chattels whereon to levy such penalty by distress, any justice before whom he shall be convicted, shall commit the offender to the common gaol or house of correction for three months, or until payment of the fine.

Penalty for buying
such arms or
accoutrements.

Sect. 50. And all money subscribed by or for the use of any corps, and all arms, stores, ammunition, drums, fifes, or musical instruments, or other articles whatever, belonging to or used by any such corps, not being the property of any particular individual, shall be vested in the commanding officer thereof, for all purposes of indictment or action, criminal or civil, in law or equity, and shall for such purpose be deemed to be his property, and may be said so in any indictment, or may be sued for and recovered as such, in any action relating thereto; and no indictment or action shall be discontinued or abated by the death, resignation, or removal of any commanding officer, but the same may be proceeded in by the succeeding commanding officer.

Subscriptions,
arms, etc.,
vested in commanding officer.

Mill.

If subscriptions or fines be not paid, a justice may direct double amount to be paid, which may be levied by distress.

Justice may mitigate penalties.

Penalty on persons refusing to give up arms.

Sect. 51. Where any volunteer shall neglect or refuse, on demand made for that purpose, to pay any sum subscribed or required by any rules of such corps to be subscribed by him towards any expenses thereof, or to pay any fines or penalties incurred under any of them, in such case any justice residing in or near to the place where such corps shall be, on application made for that purpose by any commanding or field officer, or adjutant, or serjeant-major, under any order of the commanding officer of any such corps, and proof thereof, may direct double the amount thereof to be paid as a penalty; and if such person shall refuse or neglect to pay the same for seven days, then may cause the same to be levied by distress and sale of the defaulter's goods and chattels, by warrant under his hand and seal, rendering the overplus, if any, on demand, after deducting the charges of such distress and sale, to the persons whose goods and chattels shall have been so distrained and sold; and the sums so levied shall go to the general stock of such corps, to be applied in the general expenses thereof, in like manner as any subscription or money may be applied; or where there shall be no such subscription or stock, then to any such purposes as the commanding officer may think fit: but such justice of peace may mitigate any accumulated fines or penalties, in such amount as he shall think fit, having regard to the circumstances and situation of the party incurring the same: so that the amount thereof shall not be less than one half of the full amount of such accumulated fines and penalties.

Sect. 52. And every person who shall have received, or have in his custody or possession, any arms, accoutrements, clothing, ammunition or stores, or drums, fifes, or musical instruments, or other articles furnished from the public stores, or at the public expense, or at the expense of any subscription for providing such articles, and who shall refuse or neglect, on being required by the commanding officer for the time being, or by his direction, to deliver up any such arms, accoutrements, or other articles, shall, on being convicted thereof before any justice of the county within which such arms, accoutrements, etc., shall be, forfeit £10 for every offence, and double the value of the arms, accoutrements, or other articles so detained, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice; and for want of sufficient distress, such justice is required to commit such offender to the common gaol of the county, or place where the offence shall have been committed, for any time not exceeding two months; and the moneys arising by such penalty shall be applied to the use of his Majesty, his heirs and successors.

Mill.

Toll for grinding.

By an ancient ordinance, the toll of a mill shall be taken according to the custom of the land, and according to the strength of the watercourse, either to the twentieth or four-and-twentieth corn. (*See Hawk. on Stat. Vol. I., p. 181.*)

And yet in some places the millers do claim and take the sixteenth part; and where the custom hath been so used time out of mind, perhaps it may be good and warrantable. (*Dalt. c. 112.*)

And Mr. Dalton says, the miller ought to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn; and this hard corn

is intended of wheat, rye, meslin (which is wheat and rye mixed). And for malt, the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, for that malt is more easily ground than wheat or rye; but if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. (*Id.*)

But, by *Holt, C.J.*, the toll of a mill must be regulated by custom; and if the miller take more than the custom warrants, it is extortion: but if it be a new mill, there the miller is not restrained to any certain toll; but the persons who will have their corn ground there must comply with the miller's demands: and whatsoever he takes it is not extortion, because it is the voluntary agreement of the parties. (*R. v. Burdett*, 1 *Ld. Raym.* 149.)

Extortion.

In some places the tenants are bound to have their corn ground at the lord's mill. In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom, and this was adjudged a good custom. And suit to a mill may be by reason of tenure of service, and also by custom, and so may well bind strangers. (*Hix v. Gardiner*, 2 *Bulst.* 195; *Cort v. Birkbeck*, 1 *Doug.* 218.)

Tenants may be bound to grind at the lord's mill

A new-erected house within the precincts is within the custom of mill-ture; and none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground in convenient time. (*Hardr.* 177.)

A custom which binds the tenants and residents within a manor to grind at the lord's mill "all their corn and grain which they use ground in their dwellings," does not prevent them from buying and using in their dwellings flour produced from corn ground at other mills. (*Richardson v. Walker*, 2 *B. & C.* 827; 4 *D. & R.* 498, *S. C.*)

Flour ground elsewhere than at the lord's mill

And, in *Richardson v. Capes*, where the lord of a manor had two mills, and the tenants and residents were by custom bound to grind all their malt which they used in their dwellings at the said mills, but might take it to either at their own option, it was held, that the lord, having pulled down one of the mills, had thereby suspended the custom. (2 *B. & C.* 841; 4 *D. & R.* 512, *S. C.*)

Pulling down a mill.

As to the offence of adulterating meal or flour and the rights of search for adulterated meal, see tit. "*Bread*," Vol. I.

Adulterating meal or flour.

In *R. v. Wood*, the defendant, being a miller, was indicted for changing corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a public nature. But it was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable. And the Court were unanimous not to quash it. (1 *Sess. Ca.* 217, 277.)

Of changing corn.

An indictment does not lie against a miller for receiving good barley to grind at his mill, and delivering a mixture of oat and barley meal different from the produce of the barley, and which is musty and unwholesome. (*R. v. Haynes*, 4 *M. & Sel.* 214.)

Although every larceny implies a trespass, and a felonious taking of the thing stolen, yet it hath been resolved, that even those who have the possession of goods by the delivery of the party, as a miller who hath corn delivered to him to grind, may be guilty of felony by taking away any part thereof with an intent to steal it. (1 *Hawk.* c. 33, s. 4. See tit. "*Larceny*," ante, 211.)

Taking corn with intent to steal it.

By the 36 Geo. 3, c. 85, s. 1, every miller, or other person keeping a mill for the grinding of corn, shall have in such mill a true and equal

Balances and weights to be kept in mills.

Mill.

Provisions of 35 Geo. 3, c. 102, to extend to this Act.

* *Sic.*

Millers to weigh corn, if required, before and after ground.

Millers to deliver the whole produce of corn, when ground, if required, allowing for waste and toll, etc.

Where toll is taken, to be deducted from corn before it be put into the mill.

No corn, but money, to be taken for toll.

Exceptions.

balance, with proper weights, according to the standard of the exchequer; and any person or persons appointed by (the 35 Geo. 3, c. 102 (a),) to examine the weights and balances within his or their respective counties, ridings, liberties and divisions shall be, and he and they is and are hereby authorized and required to examine such balances and weights, and to proceed with respect to them in the same manner as is provided in the said Act with respect to weights and balances; and every miller, or other person as aforesaid, in whose mill shall be found no balance or weights, shall forfeit and pay a sum not exceeding 20s.; and every miller, or other person as aforesaid, in whose mill shall be found any weight or weights not being according to the standard in the exchequer, or any false or unequal balance or balances, and all persons obstructing, hindering, or resisting such persons* in viewing and examining the same, shall be liable to be proceeded against, and shall forfeit and pay the like penalties, as any person committing the like offences against the provisions of the said Act would be respectively liable to.

Sect. 2. Every person or persons who shall bring, or cause to be brought, any corn to any mill to be ground, may require the miller or other person acting for him, or keeping the mill, to weigh, in his or her presence, such corn before it shall be ground, and after it shall be ground may require the miller, or other person as aforesaid, to weigh, in his or her presence, the produce of the corn so ground; and if any miller, or other person as aforesaid, shall refuse so to weigh the said corn, he shall be liable to forfeit and pay any sum not exceeding 40s.

Sect. 3. Every miller, or other person keeping a mill for grinding corn, shall, after grinding any corn, deliver to the person who brought, or caused such corn to be brought, if such person shall require the same, the whole produce of such corn in weight, allowing for the diminution in weight that shall have been caused by the waste in grinding, and by taking toll, in cases where toll is hereinafter allowed to be taken; and if such corn shall be dressed into flour, then the whole produce in weight, allowing for the diminution in weight that shall have been caused by the waste in grinding and dressing, and by taking toll as aforesaid; and if such corn, on being weighed after grinding, or after grinding and dressing, shall appear to weigh less than such full weight, after allowing for the diminution aforesaid, as the case may be, such miller shall for every bushel of corn so deficient in weight, forfeit and pay a sum not exceeding 1s., and also treble the value of such deficiency.

Sect. 4. Where toll is hereinafter allowed to be taken, such toll shall be deducted before the said corn shall be put into the mill.

Sect. 5. No miller, or other person keeping a mill for grinding corn, shall demand or take any part of the corn brought to be ground, or of the produce of such corn when ground, by way of toll for payment, but in lieu thereof he shall be entitled to demand payment in lawful money of Great Britain; and every miller or other person as aforesaid who shall demand or take any part of the corn brought to be ground, or of the produce of such corn when ground, by way of toll for payment, shall for every such offence be liable to forfeit and pay any sum not exceeding £5: Provided always, that where any person who has brought or caused to be brought any corn to be ground shall not have money to pay for grinding the same, it shall be lawful for the miller, or other person as aforesaid, with the consent of the person bringing the same, or causing it to

(a) See tit. "*Weights and Measures*," Vol. V. The 5 Geo. 4, c. 74, s. 23, repeals so much of the 35 Geo. 3, c. 102, as relates to the ascertain-

ment of weights and measures; but sect. 21 retains all the powers contained in it for the examination, etc., of weights and measures.

be brought, to take such part of the produce of such corn as will be equal to the money price expressed in the table of prices for grinding such corn, as hereinafter required: Provided also, that nothing in this clause contained shall extend or be construed to extend to the ancient mills commonly called *soke mills*, or to such other ancient mills where the right and obligation of the possessors of the same to grind corn for particular persons, or within particular districts, and to take a fixed and certain toll for grinding, have been established by ancient custom and the law of the land, but that such mills shall continue to take toll in the same quantity, and in the same manner as they have been used and accustomed to do under the authority aforesaid.

Mill.

Proviso.

Sect. 6. And every miller or other person who shall grind for hire or toll, shall cause to be put up in some conspicuous place in his mill, and renew when necessary, in fair and legible characters, a table of the prices in money or of the amount of toll or multure, for which the several operations of his mill are to be performed respectively; and every miller or other person as aforesaid who shall omit to set up and keep fair and legible such a table, shall be liable to forfeit and pay any sum not exceeding 20s. for every such offence.

A table of the prices to be put up.

Sect. 7. Provided that nothing in this Act contained shall extend or be construed to extend to any mills kept for the private use of the proprietor or occupier only.

Private mills.

Sect. 8. Every penalty and forfeiture imposed by this Act shall and may be recoverable before any one or more justice or justices of the peace for the county, riding, division, or place where the offence shall be committed, upon conviction or confession of the party, or on the oath of one or more credible witness or witnesses; and such penalty and forfeiture shall be levied by warrant under the hand and seal or hands and seals of such justice or justices by distress and sale of the goods and chattels of the person or persons so offending; and the penalty and forfeiture, when so levied, shall be paid, one moiety to the informer and the other moiety to the poor of the parish where the offence shall be committed, and the overplus (if any), after the costs of such conviction and distress and sale are deducted, shall be returned to the party or parties offending; and in case such distress cannot be found, and such penalty and forfeiture and the said costs and charges shall not be forthwith paid, it shall and may be lawful for such justice or justices, and he and they is and are hereby authorized and required, by warrant under his or their hand and seal, or hands and seals, to commit such offender or offenders to the common gaol or house of correction of the county or place where the offence shall be committed, for any time not exceeding one month, unless the said penalty and forfeiture and costs and charges shall respectively be sooner paid and satisfied: Provided always, that in case any person or persons shall find himself or themselves aggrieved by the judgment of any such justice or justices, then he or they shall or may, upon giving security to the amount of the value of such penalty and forfeiture, together with such costs as shall be awarded, in case such judgment shall be affirmed, appeal to the justices of the peace at the next general quarter sessions for the county, riding, division, or place as aforesaid, who are hereby empowered finally to hear and determine the same; and in case the judgment of such justice or justices shall be affirmed, it shall be lawful for such justices, at their quarter sessions as aforesaid, to award the person or persons to pay such costs, occasioned by such appeal, as to themselves shall seem meet; and no such judgment or conviction shall be removable by *certiorari* into any Court whatsoever.

Recovery and application of penalties.

Appeal

Certiorari.

Sect. 9. Any information for any offence committed against this Act shall be laid before one or more justice or justices of the peace within ten days after the said offence has been committed, and otherwise such information shall be of no effect.

Limitation to informations.

female person to work or be therein as aforesaid; and every indenture of apprenticeship, or other contract or engagement, whereby any female person whatsoever shall be bound to work or be liable to be called on to work within any mine or colliery (other than such as are before declared to be void at the end of three calendar months as aforesaid) shall, from and after the said first day of March, one thousand eight hundred and forty-three, be absolutely void.

Sect. 2. That from and after the first day of March, one thousand eight hundred and forty-three, it shall not be lawful for any owner of any mine or colliery to employ any male person under the age of ten years (*a*) within any mine or colliery, or to permit any such male person to work, or be therein for the purpose of working therein, other than such as at the passing of this Act shall have attained the age of nine years, and were at or before the passing of this Act employed within such mine or colliery.

Sect. 3. That it shall be lawful for one of her Majesty's principal secretaries of state, if and when he shall think fit, to appoint any proper person or persons to visit and inspect any mine or colliery; and it shall be lawful for every person so authorized to enter and examine such mine or colliery, and the works, buildings, and machinery belonging thereto, at all times and seasons, by day or by night, and to make inquiry touching any matter within the provisions of this Act; and the owner or occupiers of such mines or collieries, or their agents, are hereby required to furnish the means necessary for such person or persons so appointed to visit and inspect such mines and collieries, works, buildings, and machinery; and every person to be so appointed shall report his proceedings in the execution of this Act in such manner as may be directed by the secretary of state; and he shall in like manner report the state and condition of the persons working in such mine or colliery, and whether or not the provisions of this Act are properly observed in the mine or colliery which he shall so inspect.

Sect. 4. That from and after the passing of this Act no person or persons shall take any apprentice who shall be bound to work, or be liable to be called on to work, or be otherwise occupied, within a mine or colliery, who shall be under the age of ten years, or for a longer term of apprenticeship than eight years, except as the apprentice of a mason, joiner, enginewright, or other mechanic whose services may be required occasionally below as well as above ground; and every indenture of apprenticeship whereby any person shall be hereafter bound contrary to the provisions of this Act shall be void; and when any person who is now serving under articles of apprenticeship within any mine or colliery shall attain the age of eighteen years, he shall be discharged from such apprenticeship, and the articles of apprenticeship shall become absolutely null and void.

Sect. 5. That every person or persons, body or company, offending against any of the aforesaid provisions, shall forfeit a sum not more than £10 nor less than £5, for every person employed or suffered to be in a mine or colliery contrary to the aforesaid provisions, to be sued for and recovered as after mentioned.

Sect. 6. Provided always, and be it enacted, that if it shall appear on inquiry before any justices under the provisions of this Act that any person under the age hereinbefore specified has been employed in any colliery on the representation of the parent or natural guardian of such person that he was above the age so hereinbefore specified, and if it

1. Mines generally.

Males not to be employed in mines or collieries under ten years of age, etc.

Appointment of inspectors of mines and collieries;

who shall report as directed.

No person to be apprenticed under ten years of age, nor for longer than eight years.

Indentures contrary to Act void; those in force void when apprentice attains eighteen years.

Penalties for offences against this Act.

Penalty on parents or guardians misrepresenting ages of persons employed.

(a) By the 23 & 24 Vict. c. 151, s. 1, *post*, 997, the age is altered to twelve.

1. Mines generally.

shall appear to such justices that such person was so employed under the *bona fide* impression and belief on the part of the employer that he was not under the age so specified, it shall be lawful for such justices, if they see fit, to remit the said penalty as against the party employing such person, and to summon the parent or natural guardian of the person employed to appear before them on a day to be named for the purpose, and on conviction of such parent or guardian of having wilfully misrepresented the age of the person employed, such parent or guardian shall forfeit a sum not exceeding 40s.

Not to affect persons employed above ground.

Sect. 7. That nothing hereinbefore contained shall prevent any person whatever from being employed in or about any mine or colliery, so as such employment shall be carried on above ground.

Where there are vertical or other shafts, no steam or other engine to be under the care of a person under the age of fifteen years.

Sect. 8. That where there shall be any entrance to a mine or colliery by means of a vertical shaft or pit or inclined plane, or where there shall be any communication within any part of a mine or colliery to any other part thereof by a vertical shaft or pit or inclined plane, then it shall not be lawful for any owner of any such mine or colliery to allow any person or persons other than a male of the age of fifteen years (a) and upwards to have charge of any steam engine, or other engine, windlass, or gin (whether driven or worked by manual labour or any other power whatsoever), or to have charge of any part of the machinery, ropes, chains, or other tackle of any such engine, by or by means of which engine, machinery, ropes, chains, or other tackle persons are brought up or passed down any such vertical shaft or pit or inclined plane; and any person or persons offending against the provision last aforesaid shall for every such offence forfeit a sum not exceeding £50 nor less than £20, to be recovered as after provided (b).

Who shall be deemed in charge of windlass worked by a horse, etc.

Sect. 9. Provided always, and be it enacted, that in the case of a windlass or gin worked by a horse or other animal, the person on the bank under whose direction the driver of the animal used for such windlass or gin shall act shall for the purposes of this Act be deemed and taken to be the person having the charge thereof.

Proprietors of mines, etc., not to pay wages at public houses, etc.

Sect. 10. And whereas the practice of paying wages to workmen at public houses is found to be highly injurious to the best interests of the working classes, be it therefore enacted, that from and after the expiration of three months from the passing of this Act no proprietor or worker of any mine or colliery, or other person, shall pay or cause to be paid any wages or money in respect of wages for work or labour or services done in or about any mine or colliery to any person employed in or about such mine or colliery, or to any person whatever entitled to or having authority or claiming to have authority to receive such wages, at or within any tavern, public house, beer shop, or other house of entertainment, or any office, garden, or place belonging thereto or occupied therewith, but all payments in respect of such wages are hereby strictly prohibited and forbidden to be made at or within such places as aforesaid, and all payments so made are hereby declared to be of no effect whatever.

(a) But see now the 23 & 24 Vict. c. 151, s. 4, *post*, 998.

(b) To make a contractor for working a mine liable to a conviction for allowing females to have charge of the machinery or tackle by means of which persons are brought up or passed down a vertical shaft of a mine, contrary to this and the thir-

teenth sections, knowledge of or acquiescence in their being so employed must be brought home to him; and evidence of females being found in charge of such machinery and tackle on one occasion only is not sufficient for that purpose. (*Reg. v. Handley*, 9 L. T., N. S. 827.)

Sect. 11. That notwithstanding any payment of wages or money in respect of wages which shall or may be made at any such prohibited place, the person or persons to whom such wages were due or payable, or but for such payment would be due or payable, shall and may recover and receive the same in like manner as if no such payments had been made.

1. *Mines generally.*

Wages so paid recoverable as if not paid.

Sect. 12. That in case any owner of any mine or colliery, or any person liable or intrusted or employed to pay any wages or money in respect of wages for such work, labour, or services as aforesaid, shall, contrary to the provision lastly hereinbefore contained, pay or cause to be paid any such wages or money to any person whatever, at any such prohibited place as aforesaid, the person or persons so offending shall for every such offence forfeit a sum not exceeding £10 nor less than £5, to be recovered as after provided.

Penalty of £10 for paying wages at public houses, etc.

Sect. 13. That if any offence shall be committed against this Act for which the owner of any mine or colliery is hereby made responsible, and it shall be made to appear to the satisfaction of any justices or sheriff that the offence has been committed by or under the authority of some agent, servant, or workman of such owner, or by or under the authority of a contractor, without the personal consent, concurrence, or knowledge of such owner, it shall be lawful for such justices or sheriff to summon such agent, servant, workman, or contractor before them or him to answer for such offence; and such agent, servant, workman, or contractor, if convicted, shall be liable to the penalties and punishment for such offence herein specified; and such justices or sheriff may convict such agent, servant, workman, or contractor in lieu of such owner.

Agents may be summoned for acting contrary to the Act without the knowledge of owners.

Sect. 14. That the "owner" of a mine or colliery shall be taken to mean the immediate proprietor or lessee or occupier thereof, and all persons working any mine or colliery, or any part of any mine or colliery, or any lode or seam thereof, for their own benefit or as sharers of the profit, and also all partners and companies so working such mine or colliery, or any part thereof; and the words "agent" and "servant" shall be taken to mean any person receiving a salary, wages, payment, or remuneration for any description of service or work performed in a mine or colliery.

Definition of terms "owner" and "agent."

Sect. 15. That it shall not be necessary in any information, summons, or warrant issued under or in consequence of the provisions of this Act, to set forth the name or other designation of all the partners in any mine or colliery or in the working of any such mine or colliery, but that it shall be sufficient to insert in any such information, summons or warrant, the name of the ostensible proprietor, occupier, lessee, or adventurer, or title of the firm or company by which the owners, lessees, or workers of such mine or colliery are usually designated and known.

Summonses need not set forth names of all the proprietors in cases of partnership.

Sect. 16. That the service of any summons or warrant by delivering the same or a copy thereof at the office or counting-house of any mine or colliery shall be good and sufficient service thereof on the owner of such mine or colliery (and all complaints for offences against this Act shall be preferred within three calendar months next after the commission of the offence).

Service of summons on agent, to be deemed good service.

Sect. 17. That all convictions for penalties for any offence against this Act may be had before two or more justices of the peace acting for the county, riding, city, borough, division, or place where the offence shall happen, or before such justices or the sheriff of any county or stewardry in Scotland within which the offence may have been committed; and such penalties, and the costs and charges attending the recovery thereof, shall be levied by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same re-

Recovery and application of penalties.

1. Mines generally.

spectively, by warrant under the hands and seals of two or more of the said justices, or under the hand of any such sheriff, rendering the overplus of such distress and sale (if any) to the party or parties, after deducting the charge of making the same, which warrant such justices or sheriffs are hereby empowered and required to grant upon conviction of the offender, by confession or oath of one or more credible witness or witnesses; and the penalties, costs, and charges, when so levied, shall be paid, the one half to the informer and the other half to the overseers or manager of the poor of the parish, township, or place where the offence shall have been committed, to be by such overseers or managers applied in aid of the rate or assessment raised for the relief of the poor of such parish, township, or place, and in Scotland in parishes where there shall be no assessment for the relief of the poor, as the said managers shall direct, or to her Majesty, in case there shall be no such overseer or manager.

Persons not paying penalties may be imprisoned.

Sect. 18. That the justices of the peace or sheriffs by whom any person shall be convicted and adjudged to pay any sum of money for any offence against this Act may adjudge that such person shall pay the same, together with costs, either immediately or within such period as the said justices or sheriffs shall think fit; and that in default of payment at the time appointed, and in the event of no sufficient distress of the goods and chattels of such person being found within the limits of the jurisdiction of the said justices or sheriff, such persons shall be imprisoned in the common gaol or house of correction (with or without hard labour), as to the said justices or sheriffs shall seem meet, for any time not exceeding two calendar months, the commitment to be determinable upon payment of the amount of the penalty and costs.

Inhabitants of parishes not incompetent as witnesses.

Sect. 19. That no inhabitant of any parish, township, or place shall be deemed an incompetent witness in any suit, action, information, complaint, appeal, prosecution, or proceeding to be had, made, prosecuted, or carried on under the authority of this Act, for any offence committed within such parish, township, or place, by reason of such person being rated or assessed to, or liable to be rated or assessed to, or being otherwise interested in, the rates or assessments of any such parish, township, or place.

Distress not unlawful for want of form.

Sect. 20. That where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in any proceedings relating thereto, nor shall the party or parties distraining be deemed a trespasser or trespassers from the beginning on account of any irregularity which shall be afterwards done by the party or parties distraining, but the person or persons aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case, to be brought in some of the Courts of record at Westminster or Dublin, or by action raised or complaint preferred in the Court of Session in Scotland: Provided always, that no plaintiff or plaintiffs shall recover in any action for any such irregularity, trespass, or wrongful proceeding, if tender of sufficient amends for any such special damage shall be made by or on behalf of the party or parties who shall have committed or caused to have been committed any such irregularity or wrongful proceeding before such action or complaint brought; and in case no such tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the Court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he or they shall see fit; whereupon such proceedings or orders and judgments shall be had, made, and given in and by such Court as in other actions where the defendant is allowed to pay money into Court.

Sect. 21. That any person who shall think himself or herself aggrieved by any conviction by any justices of the peace under this Act may appeal to the next Court of general or quarter sessions of the peace which shall be holden not less than fifteen days after the day of such conviction for the county, stewardry, riding, city, borough, division, or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within seven days after such conviction, and seven clear days at the least before such session, and shall also either remain in custody until the session, or enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said session of the peace, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody; and the Court at such session shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet, and in case of the dismissal of the appeal or affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and all judgments, determinations, and proceedings of such justices not appealed from as aforesaid, and of such sheriff or quarter sessions, shall be final, and not subject to review by any process of law or Court whatever, any law or usage to the contrary notwithstanding (a).

1. *Mines generally.*

Appeal to quarter sessions.

Sect. 22. That no conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise, into any of her Majesty's superior Courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions not removable by *certiorari*.

By the 23 & 24 Vict. c. 151, entitled "An Act for the Regulation and Inspection of Mines" (28th August, 1860), it is enacted as follows:

Sect. 1. After the 1st of July, 1861, it shall not be lawful for the owner of any mine or colliery to employ any male person under the age of twelve years within such mine or colliery, or to permit any such male person to work or be therein for the purpose of working therein other than such as at the passing of this Act shall have attained the age of ten years, and were at or before the passing of this Act employed within the same or some other mine or colliery; and the 5 & 6 Vict. c. 99 and all the provisions and penalties thereof, shall be construed and take effect as if the age of twelve years had been mentioned in section 2 (b), of the said Act instead of the age of ten years, subject to the proviso hereinafter contained.

No boy under twelve years of age to be employed in mines.

Sect. 2. Provided, that a boy above the age of ten years and under the age of twelve years may be employed in a mine or colliery upon either of the following conditions; that is to say,

Exception for boys between ten and twelve who have certificates as to education and school attendance.

That before any such boy is so employed the owner of the mine shall, after the 1st of July, 1861, obtain a certificate under the hand of a competent schoolmaster that such boy is able to read and write:

Or, that in the second and every subsequent lunar month, during

(a) This does not prevent the Court of Queen's Bench from entertaining a special case sent by the quarter sessions for their opinion, they having

confirmed a conviction appealed against subject to such opinion. (*Reg. v. Handley*, 9 L. T., N. S. 827, Q. B.)
(b) See sect. 2, *ante*, § 993.

**2. Coal and
Ironstone
Mines.**

which such boy is employed in such mine or colliery the owner shall obtain a certificate under the hand of a competent schoolmaster that such boy has attended school for not less than three hours a day for two days in each week during the lunar month immediately preceding, exclusive of any attendance on Sundays:

And the owner shall file and preserve such certificates as aforesaid so long as such boy shall continue in the employment, and during six months after the termination of such employment, and shall produce during such time such certificates to any inspector under the 5 & 6 Vict. c. 99, or to any inspector of coal mines and ironstone mines, when required so to do by any such inspector.

Penalty on grant
of false certi-
ficates.

Sect. 3. Every person giving a false certificate for the purposes of this Act shall for every such offence forfeit a sum not more than £10 nor less than £5; and such offence shall be dealt with as an offence against the 5 & 6 Vict. c. 99.

Recital of sect. 8
of 5 & 6 Vict.
c. 99.

Sect. 4. And whereas by section 8 of the 5 & 6 Vict. c. 99, it is provided, that where there shall be any entrance to a mine or colliery by means of a vertical shaft or pit or inclined plane, or where there shall be any communication within any part of a mine or colliery to any other part thereof by a vertical shaft or pit or inclined plane, then it shall not be lawful for any owner of any such mine or colliery to allow any person or persons, other than a male of the age of fifteen years and upwards, to have charge of any steam engine or other engine, windlass, or gin (whether driven or worked by manual labour or any other power whatsoever), or to have charge of any part of the machinery, ropes, chains, or other tackle of any such engine, by or by means of which engine, machinery, ropes, chains, or other tackle, persons are brought up or passed down any such vertical shaft or pit or inclined plane:

Steam engines in
certain cases not
to be under the
charge of persons
under eighteen.

It shall not be lawful in any such case as in the said provision mentioned for the owner of the mine or colliery to allow any person, other than a male of the age of eighteen years or upwards, to have charge of any steam engine or of any part of the machinery, ropes, chains, or other tackle of any such engine, by or by means of which engine, machinery, ropes, chains, or other tackle, persons are brought up or passed down any such vertical shaft or pit or inclined plane; and any person offending against this enactment shall be subject to the penalty imposed by the recited provision for offending against the same.

Foregoing pro-
visions to be con-
strued with 5 &
6 Vict. c. 99.

Sect. 5. The foregoing provisions of this Act shall extend to all mines in Great Britain, and shall be construed with the 5 & 6 Vict. c. 99, as one Act.

II. Coal and Ironstone Mines.

18 & 19 Vict.
c. 108, repealed.

By the 23 & 24 Vict. c. 151, s. 6 (a), the 18 & 19 Vict. c. 108, shall be repealed: Provided always, that the inspectors of coal mines appointed under such Act shall continue to be inspectors under this Act of the mines to which the provisions hereinafter contained extend, subject nevertheless to removal by one of her Majesty's principal secretaries of state, and subject to all other the same provisions and with the same powers as if appointed under this Act; provided also, that all penalties incurred under the said Act before the repeal thereof may be proceeded for and applied as if this Act had not been passed.

Mines to which
part 2 of this
Act is to extend.

Sect. 7. The provisions hereinafter contained shall extend to all coal mines and collieries and mines of ironstone of the coal measures and

(a) See the earlier sections, *ante*, 997.

worked in connection with coal or with any disused or exhausted coal mines; and in the construction of such provisions the terms "coal mine or colliery or ironstone mine" shall mean every such mine and colliery as aforesaid, and every shaft in the course of being sunk, and every level or inclined plane in the course of being driven for commencing or opening any such mine, and all the works belonging thereto respectively; the term "owner" shall mean the immediate proprietor, lessee, or occupier of a coal mine or colliery or ironstone mine, or of any part thereof; and the term "agent" of a coal mine or colliery or ironstone mine shall mean any person having on behalf of the owner the care or direction thereof; and the term "inspector" or "inspectors" shall respectively mean an inspector or inspectors of coal mines and ironstone mines appointed or continued under this Act; and the term "district" shall mean the portion of Great Britain assigned or which shall be assigned to any one of such inspectors; and the word "sheriff" shall include sheriff substitute.

2. *Coal and Ironstone Mines.*

Interpretation of terms.

Sect. 8. It shall be lawful for one of her Majesty's principal secretaries of state from time to time to appoint any fit person or persons to be an inspector or inspectors of coal mines and ironstone mines under this Act, and from time to time to remove any such inspector or inspectors; and notice of the appointment of every such inspector shall be published in the *London Gazette*.

Power to secretary of state to appoint inspectors of mines.

Sect. 9. No person who shall act or practise as a land agent or as a manager, viewer, or agent, or mining engineer, or valuer of mines, or arbitrator in any matters of dispute arising between owners of mines, or be otherwise employed in any mine, shall act as an inspector of mines under this Act.

No land agent or manager of mine to act as inspector.

Sect. 10. The following rules (hereinafter referred to as the general rules) shall be observed in every colliery or coal mine and ironstone mine by the owner and agent thereof:

General rules to be observed in coal and ironstone mines.

1. An adequate amount of ventilation shall be constantly produced in all coal mines or collieries and ironstone mines to dilute and render harmless noxious gases to such an extent that the working-places of the pits, levels, and workings of every such colliery and mine, and the travelling roads to and from such working-places, shall, under ordinary circumstances, be in a fit state for working and passing therein (a).
2. All entrances to any place not in actual course of working and extension, and suspected to contain dangerous gas of any kind, shall be properly fenced off so as to prevent access thereto:
3. Whenever safety lamps are required to be used, they shall be first examined and securely locked by a person or persons duly authorized for this purpose:
4. Every shaft or pit which is out of use, or used only as an airpit, shall be securely fenced:
5. Every working and pumping pit or shaft shall be properly fenced, when operations shall have ceased or been suspended:
6. Every working and pumping pit or shaft where the natural strata,

(a) Upon an information it appeared that the process of ventilation was stopped from Saturday afternoon until Monday morning, that before the commencement of work in the mine on Monday morning the fireman went down to examine the state of the mine, and produce ventilation,

when an explosion took place. The justices found that the ventilation was inadequate:—Held, that the mine was being worked notwithstanding the cessation from work on Sunday. (*Knowles v. Dickinson*, 29 L. J., M. C., 135.)

2. *Coal and
Ironstone
Mines.*

under ordinary circumstances, are not safe, shall be securely cased or lined or otherwise made secure :

7. Every working pit or shaft shall be provided with some proper means of communicating distinct and definite signals from the bottom of the shaft to the surface, and from the surface to the bottom of the shaft :
8. All underground self-acting and engine planes on which persons travel are to be provided with some proper means of signalling between the stopping-places and the ends of the planes, and with sufficient places of refuge at the sides of such planes at intervals of not more than twenty yards :
9. A sufficient cover overhead shall be used when lowering or raising persons in every working pit or shaft where required by the inspectors :
10. No single-linked chain shall be used for lowering or raising persons in any working pit or shaft, except the short coupling chain attached to the cage or load :
11. Flanges or horns of sufficient length or diameter shall be attached to the drum of every machine used for lowering or raising persons :
12. A proper indicator, to show the position of the load in the pit or shaft, and also an adequate break, shall be attached to every machine, worked by steam or water power, used for lowering or raising persons :
13. Every steam boiler shall be provided with a proper steam gauge, water gauge, and safety valve :
14. The fly-wheel of every engine shall be securely fenced :
15. Sufficient bore-holes shall be kept in advance, and, if necessary, on both sides to prevent inundations in every working approaching a place likely to contain a dangerous accumulation of water.

Special rules to be also established.

Sect. 11. In addition to the general rules, there shall be established and observed in every coal mine, colliery, or ironstone mine, such other rules (hereinafter referred to as special rules) for the conduct and guidance of the persons acting in the management of such coal mine, colliery, or ironstone mine, and of all persons employed in or about the same, as under the particular state and circumstances of such coal mine, colliery, or ironstone mine, may appear best calculated to prevent dangerous accidents (*a*).

Present special rules to continue in force.

Sect. 12. The special rules now established and in force under the Act hereby repealed, in any coal mine or colliery, shall remain and be the special rules therein, and be of the same force and subject to be amended by the same authority and in like manner as if established under this Act.

New special rules how to be established.

Sect. 13. The owner of every ironstone mine and of every coal mine or colliery, in which special rules are not now established and in force as

(*a*) By a special rule for regulating a coal mine, the charter-master was to be the responsible manager of the pit, and the banksman was to take care that the persons descending into the pit should in no case exceed eight. Where a banksman violated such rule, by lowering more than eight persons into the pit at one time, and there was evidence that the charter-

master was close to the pit, and cognizant of the banksman (who was his servant) so lowering more than eight persons down, it was held, that the chartermaster might be convicted of aiding and abetting the banksman to commit a violation of the rule. (*Howells v. Wynne*, 32 L. J., M. C., 241.)

aforesaid, shall frame and transmit to one of her Majesty's principal secretaries of state special rules for such ironstone mine and coal mine or colliery respectively; provided always, that such special rules shall be hung up in the manner provided in the fifteenth section of this Act for the period of fourteen days before the same are transmitted to the secretary of state; such special rules for every such mine or colliery in work at the commencement of this Act to be framed and transmitted as aforesaid within three months after such commencement, and for every such mine or colliery not then in work to be so framed and transmitted within three months after the working of such mine or colliery shall be commenced or renewed; and such rules if not objected to by such secretary of state within forty days from the day upon which they are received by him shall be established:

If such secretary of state be of opinion that such rules, or any of them, do not sufficiently provide for the safety of the persons employed in or about such mine or colliery, he may within such forty days propose any alterations in or additions to such special rules, or the substitution of any other rules for such special rules or any of them:

If such owner within twenty days object to any such alterations or additions or rules by way of substitution proposed as aforesaid, he may within fourteen days after he has so objected nominate five or more practical mining engineers or other competent persons of experience, and who shall not be interested in or employed in the management of such mine or colliery, of whom such secretary of state shall appoint one or more to be an arbitrator or arbitrators, to determine the matters in difference, and to decide what special rules shall be established in such mine or colliery, and the determination of such arbitrator, or of such arbitrators or the majority of them, if more than one, shall be final, and the special rules shall be established accordingly:

If such owner do not within such fourteen days nominate such mining engineers or other competent persons as aforesaid, then two such mining engineers, or other competent persons as aforesaid, shall be appointed arbitrators, one of whom shall be named by such owner and the other by the inspector of the district:

The said arbitrators so appointed shall, before they proceed in the arbitration, appoint a third person being such mining engineer, or other competent person as aforesaid, to be their umpire in case of difference of opinion between them, and in case such arbitrators so appointed refuse or neglect to appoint such umpire as aforesaid for the space of seven days after their appointment, or of the appointment of such one of them as was last appointed, the chairman of the general or quarter sessions of the peace in and for the county, riding, or division where such mine or colliery may be situate in England, and the sheriff of the county or division of the county where such mine or colliery may be situate in Scotland, upon the application in writing by or on behalf of such owner, or the inspector of the district, shall appoint such umpire; and the determination of such arbitrators and the said umpire, or of any two of them, shall be final, and the special rules shall be established accordingly:

In case of the death, incapacity, or refusal or neglect to act of any arbitrator appointed under this Act, another arbitrator shall be appointed in his place in manner following; (that is to say) in case the place to be supplied be that of an arbitrator appointed from among the nominees of the owner of a mine or colliery, then another arbitrator shall be appointed by the secretary of state from among such of the said nominees as may not have been appointed as hereinbefore mentioned as arbitrator or arbitrators, or in case of notice to that effect from the secretary of state to such owner, shall be appointed by the secretary of state from among five competent persons to be, within fourteen days after receipt of such notice, nominated by such owner to the secretary of state; and in case the vacancy be that of an arbitrator appointed by the owner or the inspector of the district, such vacancy shall be supplied by such owner

2. *Coal and
Ironstone
Mines.*

or the inspector of the district, as the case may require; and in case of the death, incapacity, or refusal or neglect to act of any umpire appointed as aforesaid, or of the death, incapacity, or refusal or neglect to act of either of the arbitrators originally appointed before the appointment of an umpire, the provisions herein contained concerning the appointment of an umpire by such arbitrators, and concerning the appointment of an umpire in default of such appointment by such arbitrators, shall respectively be applicable to authorize the appointment of such umpire by the arbitrators for the time being, and to the case of default by them to make such appointment within seven days after notice in writing from either of the arbitrators to the other of them of the death, incapacity, or refusal or neglect to act of the umpire, and to the case of default by the arbitrators for the time being to appoint an umpire within seven days after their appointment, or of the appointment of such one of them as was last appointed:

If such owner do not within twenty days from the day on which such alterations or additions or such rules by way of substitution are proposed to him object to the same, or (not having made such nomination to the secretary of state as herein provided) do not within fourteen days after having objected as aforesaid appoint an arbitrator, and give notice in writing of such appointment to the inspector of the district, or in case of the death, incapacity, or refusal or neglect to act of any arbitrator appointed from among nominees of such owner, do not, within fourteen days after receipt of such notice from the secretary of state as aforesaid, nominate five competent persons to the secretary of state as aforesaid, or do not within the like period after notice to such owner by the inspector of the district of the death, incapacity, or refusal or neglect to act of any arbitrator appointed by such owner, appoint an arbitrator, and give notice in writing of such appointment to the inspector of the district, the special rules framed by such owner as altered, added to, or modified by the secretary of state shall be established:

The amount of payment to be made to the arbitrator or arbitrators and umpire (if any) for his or their services shall be fixed by the secretary of state, and paid in equal moieties by the owner of the mine or colliery to which the arbitration relates, and the commissioners of her Majesty's treasury, who are hereby authorized to make such payment accordingly out of any moneys provided by Parliament for that purpose.

Special rules may
be amended
from time to
time.

Sect. 14. Provided, that after such special rules are established it shall be lawful for the owner of the mine or colliery to propose from time to time in writing to one of her Majesty's principal secretaries of state any amendment of such rules, and the provisions in relation to the original special rules framed by the owner, and proposals in relation thereto by the secretary of state, and the first establishment of special rules, shall apply to the amendments so proposed; and the secretary of state may from time to time propose in writing to the owner of a mine or colliery any amendments to the special rules thereof; and the provisions in relation to alterations or the substitution of other rules proposed by the secretary of state where original special rules are transmitted to him, and the establishment of rules or modifications of rules proposed by him, shall apply to the amendments so proposed by him under this enactment.

Publication of
rules.

Sect. 15. For the purpose of making known the general rules and special rules to all persons employed in or about each coal mine, colliery, or ironstone mine, the owner or agent thereof shall cause the general rules and the special rules for such coal mine, colliery, or ironstone mine to be painted on a board or printed upon paper to be pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal office or place of business at the coal mine, colliery, or ironstone mine, and at the place where the workmen are paid; and the general rules and special rules so painted or printed

and hung up shall be renewed and restored with all reasonable despatch as often as the same or any part thereof may be defaced, obliterated, or destroyed; and a printed copy of such general and special rules shall be supplied to all persons employed in and about the same who shall apply for such copy.

**2. Coal and
Ironstone
Mines.**

Sect. 16. It shall be lawful for any inspector to enter, inspect, and examine any coal mine, colliery, or ironstone mine, and the works and machinery belonging thereto, at all reasonable times, by day or night, but so as not to impede or obstruct the working of the said coal mine, colliery, or ironstone mine, and to make inquiry into and touching the state and condition of such coal mine, colliery, or ironstone mine, works, and machinery, and the ventilation of such coal mine, colliery, or ironstone mine, and the mode of lighting or using lights in the same, and into all matters and things connected with or relating to the safety of the persons employed in or about the same, and especially to make inquiry whether the provisions of this Act are complied with in relation to such coal mine, colliery, or ironstone mine; and the owner or agent of such coal mine, colliery, or ironstone mine is hereby required to furnish the means necessary for such entry, inspection, examination, and inquiry.

Powers and duties of inspectors.

Sect. 17. If any inspector find on any such inspection, examination, or inquiry, any mine or colliery, or the works or machinery belonging thereto, or any matter, thing, or practice in or connected with such mine or colliery, to be (otherwise than as provided against by an express provision of this Act, or the general or special rules thereunder) dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector shall give notice in writing to the owner or agent of such mine or colliery of the particular grounds on which such inspector is of opinion that the said mine or colliery, or any part thereof, or any other of the particulars aforesaid, is dangerous or defective, and shall also report the same to one of her Majesty's principal secretaries of state:

Inspector to give notice of causes of danger not provided for by the rules.

If the owner or agent object to remove or remedy the danger or defect which is the subject of such notice, he may within twenty days after the receipt of such notice give notice in writing of the objections of such owner or agent, and of the grounds thereof, to the said inspector and to one of her Majesty's principal secretaries of state, and nominate to such secretary of state five or more practical mining engineers or other competent persons of experience who shall not be interested in or employed in the management of such mine or colliery, of whom the secretary of state shall appoint one or more to be an arbitrator or arbitrators, and thereupon further proceedings shall be had for the determination of the matters in difference by arbitration, as herein provided in the case of the special rules:

If such owner or agent do not give such notice and make such nomination as aforesaid within the time aforesaid, the owner of such mine or colliery shall be liable to a penalty of one pound for every day beyond the said twenty days during which he neglects to take proper and active measures for removing or remedying the danger or defect which is the subject of the said notice given by the inspector:

If the said owner or agent give such notice and make such nomination as aforesaid within the time aforesaid, and the matters in difference be determined by arbitration, then if, after the said owner or agent has been furnished with a copy of the award attested by the inspector for the district, the said owner or agent neglect forthwith to take proper and active measures for removing or remedying any danger or defect which according to such award ought to be removed or remedied, the owner of such mine or colliery shall be liable to a penalty of one pound

2. *Coal and Ironstone Mines.*

Owners of mines to produce maps or plans of mines to inspector.

If owners do not produce maps, etc., inspector may require them to be made.

Notice of accidents in mines to be given to secretary of state.

Provision for adjournment of inquests on deaths from accidents in mines in certain cases.

for every day after the receipt by the said owner or agent of such copy of the award during which the said owner or agent so neglects.

Sect. 18. The owner or agent of every coal mine, colliery, or ironstone mine shall, on the occasion and for the purpose of the inspection and examination thereof, produce and submit for examination to any such inspector as aforesaid at the mine which is to be inspected an accurate map or plan of the workings of such coal mine, colliery, or ironstone mine; and if such owner or agent do not produce and submit for examination as aforesaid such a map or plan as aforesaid, or if any such inspector as aforesaid find that any portion of any map or plan is withheld, or any part of the workings of any such coal mine, colliery, or ironstone mine is concealed from his inspection, or if he find, on examining and verifying any map or plan, that the same is imperfect or inaccurate, he is hereby empowered to require that an accurate map or plan of the actual workings of such coal mine, colliery, or ironstone mine be made within a reasonable time by and at the expense of the owner of such coal mine, colliery, or ironstone mine on a scale of not less than two chains to one inch, or on such other scale as the plan then used in the mine is constructed on; and every such map or plan as aforesaid shall show the workings of the mine up to within six months of the time of inspection; and the owner or agent of the coal mine, colliery, or ironstone mine shall, if required so to do by any such inspector as aforesaid, mark or cause to be marked on such map or plan the progress of the workings of the coal mine, colliery, or ironstone mine up to the time of his inspection thereof: Provided that nothing herein contained shall be construed to authorize any inspector to make a copy of the whole or any part of a map or plan which shall be produced or made.

Sect. 19. If and when loss of life or any personal injury to any person employed in or about any coal mine, colliery, or ironstone mine occurs by reason of any explosion, and if and when loss of life or serious personal injury to any person so employed occurs by reason of any other accident whatever within such coal mine, colliery, or ironstone mine, or any pits or shafts thereof, or any works or machinery connected with such pits or shafts, the owner or agent of such coal mine, colliery, or ironstone mine shall, within twenty-four hours next after such accident, send notice of such accident, and the loss of life or personal injury occasioned thereby, under the hand of such owner or agent, in England to one of her Majesty's principal secretaries of state, in Scotland to the lord advocate, and in all cases to the inspector of the district within which such accident shall occur, and shall specify in such notice the probable cause of such accident, and such notice may be sent through the post office by letter addressed to such secretary of state or lord advocate, and to the inspector of the district at his usual place of residence; and every owner or agent who neglects to send or cause to be sent such notice as aforesaid within the time aforesaid shall for such offence be liable to a penalty not exceeding £20.

Sect. 20. Every coroner holding an inquest upon the body of any person whose death may have been caused by any such accident as aforesaid shall, unless the inspector of the district or some person on behalf of the secretary of state be present to watch the proceedings at such inquest, adjourn such inquest, and by letter sent through the post office, four days at the least before holding such adjourned inquest, addressed to the inspector of the district, give notice to such inspector of the time and place of holding the same; provided that such coroner may before the adjournment of any such inquest take evidence to identify the body, and may order the interment thereof; provided also, that if the accident has not occasioned more than one death, and notice of the inquest has been given by the coroner to the inspector of the district by letter sent through the post office not less than forty-eight hours before the time of holding

the inquest, it shall not be imperative on the coroner to adjourn such inquest as aforesaid, in case the majority of the jury think it unnecessary so to adjourn; and the inspector shall be at liberty to examine any witnesses at any such inquest, subject to the order of the coroner.

Sect. 21. Where any coal mine, colliery, or ironstone mine is abandoned, or the working thereof discontinued, or where the working thereof is recommenced after abandonment or discontinuance, for a period exceeding two months, or where any workings are commenced for the purpose of opening a new coal mine or ironstone mine, the owner or agent of the respective mine or working shall in every such case give notice thereof to the inspector of the district, by letter sent through the post office, within two months after such abandonment, discontinuance, recommencement, or commencement of working, as the case may be; and where any such mine or colliery is abandoned or the working thereof discontinued, the owner thereof shall cause the same to be, and to be kept, securely fenced, for the prevention of accidents.

Sect. 22. If any coal mine, colliery, or ironstone mine be worked (a), and, through the default of the owner (b) or agent thereof, special rules have not been established for the same, according to the provisions of this Act, or the general rules, or the special rules for such coal mine, colliery, or ironstone mine, by this Act required to be established, have not been hung up or affixed, or have not, after obliteration or destruction, been renewed or restored, as required by this Act, or any of such general rules or special rules, provisions of which ought to be observed by the owner and principal agent or viewer of such coal mine, colliery, or ironstone mine, be neglected or wilfully violated by any such owner, agent, or viewer, such person shall be liable to a penalty of not exceeding £20; and also, in case the default or neglect be not remedied with all reasonable despatch, after notice in writing thereof given by an inspector to the owner or agent of such coal mine, colliery, or ironstone mine, to a further penalty of £1 for every day during which the offence continues after such notice; and every person, other than aforesaid, employed in or about a coal mine, colliery, or ironstone mine, who neglects or wilfully violates any of the special rules established for such coal mine, colliery, or ironstone mine, shall for every such offence be liable, upon a summary conviction for the same before two justices of the peace, or in Scotland before the sheriff having jurisdiction in the county or place where the offence is committed, to a penalty not exceeding £3, or to be imprisoned, with or without hard labour, in the common gaol or house of correction for any period not exceeding three calendar months: Provided always, that no justice of the peace being the owner of the mine, or the father, son, brother, or agent of any owner of the mine, in which the offence set forth in the complaint shall have been committed, shall, at the hearing of any complaint or charge, act as a justice of the peace

2. Coal and Ironstone Mines.

Notice to be given to inspector of the abandonment and opening of mines.

Penalties for offences against this Act.

(a) See *Knowles v. Dickinson*, ante, 999, note (a) to sect. 10.

(b) A party was summoned before justices upon an information under the 18. & 19 Vict. c. 108, s. 11, charging that he "being one of the owners and managers" of a colliery, had worked the colliery without providing the boiler with a proper steam gauge. In defence he contended that, as there were other owners, they ought to be charged with him, but he did not deny that he was resident owner, and took an active part in the management. The justices, upon this objec-

tion alone, dismissed the complaint, considering the information to be bad on the face of it, because it showed that there were other owners. A *mandamus* was granted, commanding them to hear and determine the information; for that, first the objection was invalid, and secondly, the justices had not exercised jurisdiction but had declined it, the objection being preliminary, though taken in defence, and not at the outset. (*Reg. v. Brown*, 7 El. & Bl. 757; 26 L. J., M. C. 183.)

2. Coal and Ironstone Mines.

Penalty for obstructing inspectors.

for the purposes of conviction or adjudication in any cases of dispute or difference between persons employed in working mines and their employers in which justices of the peace have jurisdiction.

Sect. 23. Every person who wilfully obstructs any inspector in the execution of this Act, and every owner or agent of any coal mine, colliery, or ironstone mine who refuses or neglects to produce, as hereinbefore required, a map or plan of the workings of the mine to any inspector, or to furnish to such inspector the means necessary for making any entry, inspection, examination, or inquiry under this Act, or who neglects or wilfully violates any provision of this Act for the neglect or violation of which no other penalty is hereby imposed, shall for every such offence be liable to a penalty not exceeding £10.

Penalty for defacing notices.

Sect. 24. Every person who pulls down, injures or defaces any notice hung up or affixed as required by this Act shall for every such offence be liable to a penalty of not exceeding 40s.

Penalties how recoverable.

Sect. 25. All penalties imposed by this Act may be recovered in a summary manner before two justices of the peace, or in Scotland before the sheriff having jurisdiction in the county or place where the offence is committed, in the manner prescribed by the law in that behalf, the information to be laid, or action raised, within three months after the commission of the offence; and it shall be lawful for one of her Majesty's principal secretaries of state to direct that any penalty imposed for neglecting to send or cause to be sent notice of any accident, as required by this Act, or for any offence against this Act which may have occasioned loss of life or personal injury, shall be paid to or among any of the family or relatives of any person or persons whose death may have been occasioned by such accident or offence, and not being a person or persons who occasioned or contributed to occasion the accident, or to any person or persons, not being the offender or offenders, who may have sustained personal injury occasioned by such accident or offence, as he may think fit; and, save as aforesaid, all penalties imposed by this Act shall, when recovered, be paid into the receipt of her Majesty's exchequer in such manner as the commissioners of her Majesty's treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Certified copy of special rules to be evidence.

Sect. 26. A copy of the special rules for the time being established in any coal mine, colliery, or ironstone mine, certified under the hands of one of the inspectors to be a copy of the special rules established in such coal mine, colliery, or ironstone mine, shall be evidence of such special rules, and of their being duly established under this Act, without further proof, and such inspector shall certify such copy when required.

Reports of inspectors to be laid before Parliament.

Sect. 27. Every inspector shall on or before the first day of March in every year make a separate and distinct report in writing of his proceedings during the preceding year, and shall transmit the same to one of her Majesty's principal secretaries of state, and a copy of such report shall be laid before both houses of Parliament.

Wages to be paid to person employed in mines, or his representative in money.

Sect. 28. The wages of each and every person employed in any coal mine, colliery, or ironstone mine shall be paid to him or his representative authorized or deputed to that effect by his immediate employer in money at an office to be appointed for that purpose in the special rules for such mine or colliery, and such office shall not be contiguous to any house where spirits, wine, beer, or other spirituous liquors are sold; and every owner or agent, or such employer, who shall pay or permit any wages to be paid contrary to the provisions of this Act, shall for every such offence be liable to a penalty not exceeding £10.

Where payment of persons em-

Sect. 29. Where the persons employed in any coal mine, colliery, or ironstone mine are paid by the weight, measure, or gauge of the coal,

ironstone, or other material gotten by them, such coal, ironstone, or other material shall be truly weighed, measured, or gauged accordingly; and it shall be lawful for such persons, at their own cost, to station a person (being one of the persons for the time being employed in such coal mine, colliery, or ironstone mine) at the place appointed for such weighing, measuring, or gauging, in order to take an account thereof, and to take an account of the weight, measure, or gauge used therein on behalf of such persons by whom he is so employed; but such person so employed shall not be authorized in any way to impede or interrupt the working of the coal mine, colliery or ironstone mine, or to interfere with the weighing, measuring, or gauging, but shall only be authorized to take such account as aforesaid; and the absence of such person shall not be a reason for delaying or interrupting such weighing, measuring, or gauging.

2. *Coal and Ironstone Mines.*

ployed in mines is by weight, etc., an account may be taken.

Sect. 30. This Act shall not extend to Ireland.

Extent of Act.

Sect. 31. This Act shall commence from the thirty-first day of December one thousand eight hundred and sixty.

Commencement of Act.

By the 25 & 26 Vict. c. 79, entitled "An Act to Amend the Law relating to Coal Mines" (7th August, 1862), it is enacted as follows:

Sect. 1. This Act shall apply only to coal mines and ironstone mines mentioned in the seventh section of the principal Act (*a*).

Application of Act.

Sect. 2. The expression "existing mine" shall mean a mine that is actually being worked at the time of the passing of this Act:

Interpretation of terms.

The expression "new mine" shall mean a mine opened after the passing of this Act, or an old mine the working of which is begun afresh after the passing of this Act.

Sect. 3. After the passing of this Act it shall not be lawful for the owner of a new mine, and after the 1st of January, 1865, it shall not be lawful for the owner of an existing mine to employ any person in working within such mine, or to permit any person to be in such mine for the purpose of working therein, unless there are in communication with every seam of such mine for the time being at work at least two shafts or outlets, separated by natural strata of not less than ten feet in breadth, by which shafts or outlets distinct means of ingress and egress are available to the persons employed in the mine; but it shall not be necessary for the two shafts or outlets to belong to the same mine, if the persons therein employed have available means of ingress and egress by not less than two shafts or outlets, one or more of which may belong to another mine.

Prohibition of single shafts.

This section shall not apply to opening a new mine for the purpose of searching for or proving minerals, or to any working for the purpose of making a communication between two or more shafts, so long as not more than twenty persons are employed at any one time in the said new mine or working.

Sect. 4. If the owner of any existing mine objects, within such time as is hereinafter mentioned, in writing addressed to one of her Majesty's principal secretaries of state, that by reason of the nature of the mine, or from its being nearly exhausted, or from any other special cause, he ought to be exempted from the obligation of providing an additional shaft or outlet in pursuance of this Act, or that he cannot provide an additional shaft or outlet within the time limited by this Act, a reference shall be made to arbitration as to whether the owner ought or ought not, under the circumstances, to provide an additional shaft or outlet, or

Appeal by owner of existing mine to arbitration.

**Misde-
meanour.**

ought or ought not to have an extension of time for providing an additional shaft or outlet: if the result of the arbitration is in favour of the owner, he shall, as the case requires, be relieved from the obligation of providing an additional shaft or outlet, or have such extension of time granted to him for providing an additional shaft or outlet as may be determined by the award: if the result of the arbitration be against the owner, or if no award is made by reason of any default or neglect on the part of the owner, he shall be bound to comply with the provisions of this Act, in the same manner as if this section had not been enacted.

**Mode of conduct-
ing arbitrations.**

Sect. 5. Arbitrations, in pursuance of this Act, shall be conducted in manner directed by the thirteenth section of the principal Act (*a*) in cases where the owner, within the twenty days therein mentioned, objects to any alterations in or additions to rules, or rules by way of substitution proposed by the secretary of state; but no objection made in pursuance of this Act by the owner of an existing mine shall be entertained unless it is made within the times following; that is to say, if he claims to be exempted from the obligation of providing an additional shaft or outlet in pursuance of this Act, within six calendar months after the passing of this Act; and if he claims to have an extension of time for providing an additional shaft or outlet, within the six calendar months immediately preceding the 1st of January, 1866.

**Power to enforce
by injunction
compliance with
Act.**

Sect. 6. Any of her Majesty's superior Courts of law or equity may, upon the application of the attorney-general acting on behalf of the said secretary of state, prohibit by injunction the working of any mine in which any person is employed in working, or is permitted to be for the purpose of working, in contravention of the provisions of this Act, and may award such costs in the matter of the injunction as the Court thinks just; but this section shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act.

**Agreements in
contravention of
Act illegal.**

Sect. 7. No person shall be precluded by any agreement made before the passing of this Act from doing such acts as may be necessary for providing an additional shaft or outlet to a mine where the same is required by this Act, or be liable under any agreement to any penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this Act.

**Construction of
Act.**

Sect. 8. This Act shall be construed as one with the principal Act, and the powers hereby given shall be deemed to be in addition to and not in derogation of any powers conferred by the principal Act, and such last-mentioned powers may be exercised in the same manner as if this Act had not been passed.

Misdemeanour.**What is a mis-
demeanour.**

This word, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine or imprisonment, or both. (*Barl.* 370.)

This is the case with respect to acts of omission or commission which were punishable at common law: but many offences are by the statute law punishable as misdemeanours specifically.

A misdemeanour is, in truth, any crime less than felony; and the

word is generally used in contradistinction to felony; and misdemeanours comprehend all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, public nuisances, etc. (4 *Bl. Com.* 5, *Christian's note* (2). And see *Dick. Sessions*, by *Serjeant Talfourd*, p. 103.)

Misdemeanours have been sometimes termed misprisions. (See 1 *Hale*, 371, 375.)

As to what are misdemeanours in general, see the various titles of offences throughout this work, and tit. "*Indictment*," *ante*, 2.

As to what attempts to commit an offence amount to a misdemeanour, see tit. "*Attempt*," *Vol. I.* An attempt to suborn a person to commit perjury is a misdemeanour. (*Cald.* 400. And see *R. v. Higgins*, 2 *East*, 5; and tit. "*Accessory*," *Vol. I.*)

Attempts to
commit.

By the 14 & 15 Vict. c. 100, s. 12, if upon the trial of any person for any misdemeanour it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour, and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for felony on the same facts, unless the Court before which such trial may be had shall think fit in its discretion to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanour. "*Misdemeanour is nomen collectivum*." (*Ryalls v. R.*, 18 *L. J.*, *M. C.* 69.)

In crimes below the degree of felony there can be no accessories; but all persons guilty therein, if concerned at all, are principals. (4 *Bl. Com.* 36; 1 *Hale*, 613; tit. "*Accessory*," *Vol. I.*)

Accessories.

As to receivers of stolen goods, etc., see tit. "*Accessory*," *Vol. I.*, and tit. "*Larceny*," *ante*, 279.

As to the trial of indictments, etc., for misdemeanours, see tit. "*Tra-verse*," *Vol. V.*

Trial of.

As to the time of pronouncing the judgment in, see tit. "*Judgment*," *ante*, 58.

Judgment.

An agreement to put an end to a prosecution for a misdemeanour has been also considered to be illegal, as impeding the course of public justice. (*Collins v. Blantern*, 2 *Wils.* 341; *Edgcombe v. Rodd*, 5 *East*, 302.) This however, is sometimes done after conviction, in cases of misdemeanour, with the sanction of the Court, where the offence principally and more immediately affects some individual, in which case the defendant is occasionally permitted by the Court to *speak with the prosecutor* before any judgment is passed, and a nominal punishment is then pronounced on the defendant, if the prosecutor declares himself satisfied. (4 *Bl. Com.* 363.) And where, in a case of indictment for ill-treating a parish apprentice, a security for the fair expenses of the prosecution had been given by the defendant after conviction, upon an understanding that the Court would abate the period of his imprisonment, the security was in this case held to be good, upon the ground that it was given with the sanction of the Court, and was to be considered as part of the punishment suffered by the defendant in expiation of his offence, in addition to the imprisonment inflicted on him. (*Beeley v. Wingfield*, 11 *East*, 46.) But, in general, any contract or security made in consideration of dropping a criminal prosecution, suppressing evidence, soliciting a pardon, or compounding any public offence, without leave of the Court, is invalid. (1 *Chit. Crim. L.* 4.)

Compounding of.

Mute (a).

Former punishment for.

Heretofore, a person standing mute upon an arraignment of felony (that is, without speaking anything at all, or without putting himself upon God and the country) was liable to a strange and cruel punishment; the judgment in such case was, that the man or woman should be remanded to the prison, and laid there in some low and dark room, where they should lie naked on the bare earth, without any litter, rushes, or other clothing, and without any garment about them, but something to cover their privy parts, and that they should lie upon their backs, their heads uncovered, and their feet and one arm to be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner to be done with their legs; and there should be laid upon their bodies iron and stone, so much as they might bear and more; and the next day following to have three morsels of barley bread without any drink, and the second day to drink thrice of the water next to the house of the prison (except running water) without any bread; and this to be their diet until they were dead. So as, upon the matter, they should die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment was, because they refused to stand to the common law of the land. (2 *Inst.* 178, 179) (b).

And this (which was called *peine forte et dure*) some persons endured for the sake of their children or other kindred; because in such case they forfeited their goods only, and not their lands; for lands could not be forfeited but by attainder.

Present laws as to.

But now, by the 7 & 8 Geo. 4, c. 28, s. 2, if any person being arraigned upon, or charged with, any indictment or information for treason, felony, piracy, or misdemeanour, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Plea of not guilty to be entered.

A person deaf and dumb was to be tried for a capital felony. The judge ordered a jury to be impannelled to try whether he was mute by the visitation of God; the jury found that he was so. The jury were then sworn to try whether he was able to plead, which they found in the affirmative, and the prisoner by a sign pleaded "not guilty." The judge then ordered the jury to be sworn to try whether the prisoner was "now sane or not," and on this question his lordship directed the jury to consider whether the prisoner had sufficient intellect to comprehend the course of the proceedings so as to make a proper defence, to challenge any juror he might wish to object to, and to comprehend the details of the evidence, and that if they thought he had not they should find him not of sane mind. The jury did so, and the judge ordered the prisoner to be detained under the 39 & 40 Geo. 3, c. 94, s. 2. (*R. v. Pritchard*, 7 *Carr. & P.* 303.)

(a) See 1 *Chit. C. L.* 424, etc.

(b) The Marquis Beccaria, in an exquisite piece of raillery, has proposed this problem with a gravity and precision that are truly mathematical: "The force of the muscles and the

sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime." (*Ch.* 16; 1 *Bl. Com.* 327, n.)

New Trial.

In felony or treason, no new trial can be granted where the proceedings have been regular (*R. v. Mawbey*, 6 *T. R.* 625; *R. v. Inhabitants of Oxford*, 13 *East*, 416; *Reg. v. Bertrand*, *L. R.* 1 *P. C.* 520; 36 *L. J.*, 1 *P. C.* 51); but if the conviction appear to the judge to be improper, he may respite the execution, to enable the defendant to apply for a pardon. (*R. v. Inhabitants of Oxford*, 13 *East*, 416.)

In felonies.

A new trial was granted on ground of the improper reception of depositions in a case of felony removed by *certiorari*. (*Reg. v. Scuipe*, 17 *Q. B.* 238.)

In misdemeanours, after a conviction, the superior Courts may grant a new trial. (*R. v. Mawbey*, 6 *T. R.* 638; *R. v. Inhabitants of Oxford*, 13 *East*, 416.) But inferior Courts have no such power where the merits are called in question, though they have it if the proceedings have been irregular. (*Id.*) And on this ground it is usual to remove the proceedings by *certiorari* into the Queen's Bench.

In misdemeanours.

It is questionable whether a new trial is grantable after acquittal in any criminal case, except a penal action. (*R. v. Sutton*, 2 *Nev. & M.* 57; 5 *B. & Ad.* 52). But the Court may, it seems, suspend the judgment, in order that a new indictment may be preferred. (See *Id.*)

The allowance of a new trial is after a general verdict; but after special verdict a *venire facias de novo* is the proper mode of bringing the merits a second time under consideration. (1 *Chit. C. L.* 654.) The material difference between a new trial and a *venire facias de novo* is, that the latter is only grantable where some mistake is apparent on the record; but the former may be granted on the ground of improper direction, false evidence, misconduct of jurors, and a variety of other causes, which never appear on the face of the proceedings. (*Id.*)

Venire facias de novo.

As to the grounds for granting a new trial in general, see 1 *Chit. C. L.* 655, etc.; *Tidd, Prac.* 9th edit.; and instances throughout this work.

Grounds of granting.

It is always granted where justice has not been done.

In general, a new trial cannot be granted in favour of the prosecutor after the defendant has been acquitted, whether on an indictment for a misdemeanour or a felony (*R. on Prosecution of Wyndham v. Mann*, 4 *M. & Sel.* 337), even though the verdict appears to be against evidence (*R. v. Reynell*, 6 *East*, 315; 2 *Smith*, 407, *S. C.*; 4 *Bl. Com.* 361), or was upon the misdirection of the judge (*R. v. Cohen*, 1 *Stark. N. P. C.* 516; 1 *Chit. C. L.* 657). A new trial will not be granted after an acquittal upon an indictment for obstructing a highway, on the ground that the verdict is against the evidence. (*Reg. v. Johnson*, 6 *Jur., N. S.* 553; 29 *L. J., M. C.* 133; 8 *W. R.* 236, *Q. B.*) Wherever the substance of a criminal proceeding is civil a new trial may be granted after a verdict for the defendant, on the ground either of misdirection or of the verdict being against the evidence. (*Reg. v. Russell*, 3 *El. & Bl.* 942; 18 *Jur.* 1022; 23 *L. J., M. C.* 173. See *Reg. v. Botfield*, 1 *Jur., N. S.* 594, *n. Q. B.*) But where the verdict has been obtained by the fraud of the defendant, or in consequence of irregularity in his proceedings, as by keeping back the prosecutor's witnesses, or neglecting to give due notice of trial, or by surprise, a new trial may be granted. (2 *Salk.* 646; 2 *Hawk. c.* 47, s. 12; *Reg. v. Whitehouse*, *Dear. C. C.* 1; *sed vide R. v. Fenwick*, 1 *Sid.* 153; *R. v. Read*, 1 *Lev.* 9.) And when the defendant has been acquitted on an indictment for not repairing a road, etc., the Court will, under very special circumstances, suspend the entry of judgment so as to prevent a plea of *autrefois acquit*, and enable the parties to have the question reconsidered upon another indictment, without

New Trial.

the prejudice of a former judgment. (*R. v. Wadsworth*, 1 B. & Ald. 63; 2 Chit. Rep. 282, S. C.; *Reg. v. Chalticombe*, 6 Jur. 481. But see *R. v. Inhabitants of Burbon*, 5 M. & Sel. 392.)

Where in an indictment not charging an offence for which the defendants, if guilty, might suffer fine and imprisonment, a civil right comes in question, and the right would be bound by the verdict, a new trial may be granted after a verdict for defendant. By Lord Campbell, C. J., and Crompton, J. (*Reg. v. Russell*, 3 El. & Bl. 942; 18 Jur. 1022; 23 L. J., M. C. 173. See *Reg. v. Botfield*, 1 Jur., N. S. 594, n. Q. B.)

Time for application.

An application of this nature cannot, in general, be made after an application for arresting the judgment. (*Tubervil v. Stamp*, 2 Salk. 647.) But in some cases, for the sake of justice, the Court will allow it. (*R. v. Gough*, 2 Dougl. 797; 2 Com. Rep. 525; *Bac. Abr. Trial* (L. 1); 1 Chit. C. L. 658.)

A motion for a new trial on behalf of a defendant in an indictment must be made within the first four days of term, though the argument will be postponed till the defendant is brought up for judgment. (*Reg. v. Hetherington*, 5 Jur. 529, Q. B.)

Several defendants.

Where there are several defendants, all of them who have been convicted must be actually present, unless a special ground be laid for dispensing with the general rule. (*R. v. Teal and others*, 11 East, 307; 1 Sess. Cass. 428; *Com. Dig. Indictment* (N); 1 Chit. C. L. 659; *R. v. Fielder and another*, 2 D. & R. 46. And see *Tidd*, 9th edit.)

In moving for a new trial where the defendant has been found guilty of a nuisance in obstructing a public sewer, and where he is liable not to personal punishment but to a fine, it is not necessary that the defendant should be present in Court. (*R. v. Parkinson*, 2 C. C. R. 459; 15 Jur. 1011.)

A motion for a new trial cannot be made on behalf of the only defendant in a criminal case, upon whom sentence of transportation has been passed at the assizes unless the defendant is present in Court. (*Reg. v. Caudwell*, 2 C. C. R. 372, n.; 15 Jur. 1011; 21 L. J., M. C. 48; 17 Q. B. 503.)

Where some of the defendants have been convicted, and others acquitted, a new trial may be granted as to the former, without impeaching the verdict so far as it relates to the latter. (*R. v. Mawbey*, 6 T. R. 638.) Where all of several defendants in an indictment for conspiracy are found guilty, if one of them show himself entitled to a new trial on grounds not affecting the others, the new trial will nevertheless be granted. (*Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121.) Where the defendant is in custody, he must apply to the Court for a *habeas corpus* to bring him up to apply for a new trial. (*R. v. Spragg*, 2 Burr, 931.)

Costs of.

A new trial will in general be granted, without compelling the defendant to pay costs of the former proceedings. (*R. v. Warner*, 8 T. R. 378.) But the Court may, in its discretion, order the costs to abide the event. (*Reg. v. Whitehouse*, Dear. C. C. 1.)

An indictment for felony had been removed from the quarter sessions, and tried at nisi prius. The prisoners were convicted, and the Court of Queen's Bench ordered a new trial. Neither side brought down the record, but the prisoners applied to be tried there. This could not be done, as the record had not been brought down. A *procedendo* issued, and the prisoners were tried at the quarter sessions and convicted. (*Reg. v. Scaife*, 3 C. & K. 211.—*Alderson*.)

Newspapers and Pamphlets.

By the 60 Geo. 3, c. 9, s. 2, no quantity of paper less than a quantity equal to twenty-one inches in length and seventeen inches in breadth, in whatever way or form the same may be made or may be divided into leaves, or in whatever way the same may be printed, shall be deemed or taken to be a sheet of paper within the meaning and for the purposes of this Act.

What quantity of paper to be deemed a sheet.

Sect. 3. No cover or blank leaf, or any other leaf upon which any advertisement or other notice shall be printed, shall, for the purposes of this Act, be deemed or taken to be a part of any such pamphlet, paper, part, or number aforesaid.

Cover, etc., not deemed part of a pamphlet.

Sect. 4. All pamphlets and papers containing any public news, intelligence, or occurrences, or any such remarks or observations as aforesaid, printed for sale, and published periodically, or in parts or numbers, at intervals exceeding twenty-six days between any two such pamphlets or papers, parts or numbers, and which said pamphlets, papers, parts or numbers respectively, shall not exceed two sheets, or which shall be published for sale at a less price than 6*d.*, shall be first published on the first day of every calendar month, or within two days before or after that day, and at no other time; and that if any person or persons shall first publish or cause to be published any such pamphlet, paper, part, or number aforesaid, on any other day or time, he or they shall forfeit, for every such offence, the sum of £20.

Publications at intervals exceeding twenty-six days, to be published on first day of month, or in two days before or after.

Sect. 5. Upon every pamphlet or paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, printed in any part of the United Kingdom for sale, and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such pamphlets or papers, parts or numbers, and upon every part or number thereof, shall be printed the full price at which every such pamphlet, paper, part, or number shall be published for sale, and also the day on which the same is first published; and if any person shall publish any such pamphlet, paper, part, or number, without the said price and day being printed thereon, or if any person shall, at any time within two months after the day of publication printed thereon as aforesaid, sell or expose to sale any such pamphlet, paper, part, or number, or any portion or part of such pamphlet, paper, part, or number, upon which the price so printed as aforesaid shall be 6*d.*, or above that sum, for a less price than the sum of 6*d.*, every such person shall, for every such offence, forfeit and pay the sum of £20.

Price and day of publication to be printed on periodical publications.

Omitting same, selling, etc.

Sect. 6. Nothing in this Act contained shall extend, or be construed to extend, to subject any person publishing any pamphlet or paper to any penalty for any allowance in price made by the person for whom and on whose behalf, and for whose profit, benefit, or advantage, the same shall have been first published, to any bookseller or distributor, or other person to whom the same shall be sold for the purpose of retailing the same.

Proviso for allowance to distributors, etc., who buy to retail.

Sect. 7. All pamphlets and papers which are by this Act declared to be subject to the stamp duties upon newspapers, shall be freed and discharged from all the stamp duties and regulations contained in any Act of Parliament relating to pamphlets.

Such pamphlets freed from certain regulations.

Sect. 8. No person, from and after thirty days after the passing of this Act, shall print or publish for sale any newspaper, or any pamphlet

No persons to print, etc., newspapers, etc., or

*Newspapers
and
Pamphlets.*

pamphlets, without entering into recognizance, or giving bond for securing fines upon conviction for libels.

or other paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in church or state, which shall not exceed two sheets, or which shall be published for sale at a less price than 6*d.*, until he or she shall have entered into a recognizance before a baron of the exchequer, in England, Scotland, or Ireland respectively, as the case may be, if such newspaper or pamphlet, or other paper aforesaid, shall be printed in London or Westminster, or in Edinburgh or Dublin, or shall have executed in the presence of, and delivered to, some justice of the peace for the county, city, or place where such newspaper, pamphlet, or other paper shall be printed, if printed elsewhere, a bond to his Majesty, his heirs and successors, together with two or three sufficient sureties, to the satisfaction of the baron of the exchequer taking such recognizance, or of the justice of the peace taking such bond, every person printing or publishing any such newspaper, or pamphlet, or paper aforesaid, in the sum of £300, if such newspaper, pamphlet, or paper shall be printed in London, or within twenty miles thereof, and in the sum of £200, if such newspaper, pamphlet, or paper shall be printed elsewhere in the United Kingdom, and his or her sureties in a like sum in the whole (a), conditioned that such printer or publisher shall pay to his Majesty, his heirs and successors, every such fine or penalty as may at any time be imposed upon or adjudged against him or her, by reason of any conviction for printing or publishing any blasphemous or seditious libel, at any time after the entering into such recognizance, or executing such bond; and that every person who shall print or first publish any such newspaper, pamphlet, or other paper, without having entered into such recognizance, or executed and delivered such bond with such sureties as aforesaid, shall, for every such offence, forfeit the sum of £20.

If sureties pay any part of money for which they are bound, or become bankrupt, etc., new recognizance to be given.

Sect. 9. In every case in which any surety or sureties in any such recognizance or bond shall have been required to pay, and shall have paid the whole or any part of the sum for which he, she, or they shall have become surety; or in case any such surety or sureties shall become bankrupt, or be discharged under any Insolvent Act; then and in every such case the person for whom such surety or sureties shall have been bound, shall not print or publish any newspaper or pamphlet, or other paper aforesaid, until he or she shall, upon being required so to do by the commissioners of stamps for Great Britain and Ireland respectively, have entered into a new recognizance, or executed a new bond, with sufficient sureties, in the manner and to the amount aforesaid; and in case he or she shall print or publish any such newspaper, or pamphlet, or other paper aforesaid, without having entered into such new recognizance, or executed such new bond as aforesaid, having been required so to do as aforesaid, he or she shall forfeit, for every such offence, the sum of £20.

Sureties may withdraw from recognizance.

Sect. 10. If any surety or sureties shall be desirous of withdrawing from such recognizance or bond, it shall and may be lawful to and for him or them so to do, upon giving twenty days' previous notice in writing to the said commissioners of stamps respectively, or to the distributor of stamps of and for the district where the printer or publisher for whom he or they is or are surety or sureties shall reside, and also to such printer or publisher; and that in any such case, every such surety or sureties, from and after the expiration of such notice, shall not be liable upon the said bond or recognizance, other than and except for any penalty or penalties before that time imposed or incurred, and for which he or they would otherwise have been liable under the said recognizance or bond; and that then and in every such case, the person for whom

New recognizance to be entered into.

(a) By the 11 Geo. 4 & 1 Will. 4, c. 73, these sums are increased to £400 and £300 respectively.

such surety or sureties shall have been bound, shall not print or publish any newspaper or pamphlet, or other paper aforesaid, until he or she shall have entered into a new recognizance, or executed a new bond, with sufficient sureties, in the manner and to the amount aforesaid : and in case he or she shall print or publish any such newspaper or pamphlet, or other paper aforesaid, without having entered into such new recognizance or bond as aforesaid, he or she shall, for every such offence, forfeit the sum of £20.

Sec. 11. No such bond as aforesaid shall be subject or liable to any stamp duty ; anything in any Act or Acts of Parliament to the contrary notwithstanding.

Bonds free from stamp duty.

Sec. 12. Lists of all the recognizances which shall have been entered into in the respective Courts of Exchequer in England, Scotland, or Ireland, shall, four times in each year, be transmitted to the commissioners managing the stamp duties in Great Britain and Ireland respectively, as the case may be, by the respective officers recording such recognizances in such respective Courts ; and all bonds executed under the provisions of this Act shall, within ten days at the furthest after the execution thereof, be transmitted to the said commissioners respectively, by the justices of the peace to whom the same shall have been respectively delivered.

Lists of recognizances, etc., transmitted to commissioners of stamps.

Sects. 13, 14, and 15 are repealed by 6 & 7 Will. 4, c. 76.

Sec. 16. It shall be lawful for any of his Majesty's Courts of record at Westminster or Dublin, or of great session in Wales (a), or any judge thereof respectively, or for any Court of quarter or general sessions of the peace, or for any justice of the peace before whom any person charged with having printed or published any blasphemous, seditious, or malicious libel, shall be brought for the purpose of giving bail upon such charge, to make it a part of the condition of the recognizance to be entered into by such person and his or her bail, that the person so charged shall be of good behaviour during the continuance of such recognizance.

Recognizance, in case of libel, to be of good behaviour, as well as to appear to answer.

Sec. 17. All fines, penalties, and forfeitures by this Act imposed, shall be recovered by action of debt, bill, plaint, or information in any of his Majesty's Courts of record at Westminster or Dublin, or the Courts of great session in the principality of Wales (a), or the Courts of the counties palatine of Chester, Lancaster, and Durham, or in the court of session or court of exchequer in Scotland (as the case shall require), wherein no essoign, privilege, protection, wager of law, or more than one imparlance shall be allowed ; or before any two justices of the peace of the county, riding, stewardry, city, or place where the offence shall be committed : Provided always, that no larger amount in the whole than £100 shall be recoverable or recovered before any justices of the peace, for any such penalties incurred in any one day ; anything in this Act or any other Acts of Parliament contained to the contrary notwithstanding.

Recovery of penalties.

Proviso as to amount.

Sec. 18. It shall be lawful for any two or more justices of the peace, in all cases in which they are authorized to hear and determine any offence or offences which shall be committed against this Act, or any other Act or Acts of Parliament which are by this Act required to be construed therewith as part thereof, upon information exhibited or complaint made in that behalf, within three months after any such offence committed, to summon the party accused, and also the witnesses on either side ; and upon the appearance, or contempt of the party accused in not

Two justices may determine offences.

(a) The Welsh jurisdiction is abolished by the 1 Will. 4, c. 70.

menced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of his Majesty's Courts, or before any justice or justices of the peace, against any person or persons, for the recovery of any fine, penalty, or forfeiture made or incurred by virtue of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of his Majesty's attorney-general, in that part of Great Britain called England, or in the name of his Majesty's attorney-general in Ireland, or his Majesty's advocate for Scotland (as the case may be respectively), or in the name of the solicitor or some other officer of his Majesty's stamp duties in that part of Great Britain called England, or in Scotland or Ireland respectively: and if any action, bill, plaint, or information, shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared, and the same shall be null and void to all intents and purposes.

*Newspapers
and
Pamphlets.*

name of attorney-general, etc., or officer of stamps.

Sects. 23, 24, 25, and 27, are repealed by 6 & 7 Will. 4, c. 76.

Sect. 26. Nothing in this Act shall extend to Acts of Parliament, proclamations, orders of council, forms of prayer and thanksgiving, and acts of state, ordered to be printed by his Majesty, his heirs or successors, or his or their sufficient and authorized officer; or to any printed votes or other matters by order of either House of Parliament; or to books commonly used in the schools of Great Britain or Ireland, or books or papers containing only matters of devotion, piety, or charity; or daily accounts or bills of goods imported and exported; or warrants or certificates for the delivery of goods; and the weekly bills of mortality; or to papers containing any lists of prices current, or of the state of the markets, or any account of the arrival, sailing, or other circumstances relating to merchant ships, or vessels; or of any other matter wholly of a commercial nature: Provided such bills, lists, or accounts, do not contain any other matter than what hath been usually comprised therein; or to the printers or publishers of the foregoing matters, or any or either of them.

Proviso for Acts of Parliament, proclamations, orders of council, etc.

By the 6 & 7 Will. 4, c. 76, s. 4, every paper declared by the schedule (A.) to this Act annexed to be chargeable with the duties by this Act granted on newspapers, shall be deemed and taken to be a newspaper within the meaning of this Act, and of every Act relating to the printing or publishing of newspapers, and shall be subject and liable to all the regulations by this Act imposed; and wheresoever in this Act or in any other Act or Acts relating to the printing and publishing of newspapers, the word "newspaper" is or may be used, it shall be deemed and taken to mean and include any and every such paper as aforesaid; and in all proceedings at law or otherwise, and upon all occasions whatsoever, it shall be sufficient to describe by the word "newspaper" any paper by this Act declared to be a newspaper, without further or otherwise designating or describing the same.

Newspapers subject to the regulations of this Act.

Sect. 5. Every sheet or piece of paper which shall be published as a supplement to any newspaper, except the *London Gazette* and *Dublin Gazette* respectively, shall be printed with the same title and date as the newspaper to which it shall be or shall purport to be a supplement, with the addition of the words "supplement to" prefixed to such title; and upon every such newspaper, except as aforesaid, there shall be printed in conspicuous characters, some words clearly indicating that a supplement is published therewith; and if any sheet or piece of paper shall be published as a supplement to any newspaper, such supplement and the newspaper to which the same shall relate, not having printed thereon respectively the several particulars by this Act required to be printed thereon respectively, and in the manner and form by this Act directed, the publisher of such newspaper shall for every such sheet or piece of paper so published as a supplement, and for every copy thereof,

Particulars to be printed on newspapers with supplements.

Penalty for omission.

*Newspapers
and
Pamphlets.*

Penalty for publishing supplements without the newspapers.

No person to print or publish a newspaper until a declaration be delivered at stamp office.

forfeit the sum of £20; and if any person shall sell, deliver out, or in any other manner publish any sheet or piece of paper which shall be or shall purport to be a supplement to any newspaper, without at the same time selling or otherwise publishing and delivering therewith the newspaper to which the same shall be or purport to be a supplement, every such person so offending shall for every such offence forfeit the sum of £20.

Sect. 6. No person shall print or publish, or shall cause to be printed or published, any newspaper before there shall be delivered to the commissioners of stamps and taxes, or to the proper authorized officer at the head office for stamps in Westminster, Edinburgh, or Dublin respectively, or to the distributor of stamps other proper officer appointed by the said commissioners for the purpose in or for the district within which such newspaper shall be intended to be printed and published, a declaration in writing containing the several matters and things hereinafter for that purpose specified; that is to say, every such declaration shall set forth the correct title of the newspaper to which the same shall relate, and the true description of the house or building wherein such newspaper is intended to be printed, and also of the house or building wherein such newspaper is intended to be published, by or for or on behalf of the proprietor thereof, and shall also set forth the true name, addition, and place of abode of every person who is intended to be the printer or to conduct the actual printing of such newspaper, and of every person who is intended to be the publisher thereof, and of every person who shall be a proprietor of such newspaper who shall be resident out of the United Kingdom, and also of every person resident in the United Kingdom who shall be a proprietor of the same, if the number of such last-mentioned persons (exclusive of the printer and publisher) shall not exceed two, and in case such number shall exceed two, then of such two persons, being such proprietors resident in the United Kingdom, the amount of whose respective proportional shares in the property or in the profit or loss of such newspaper shall not be less than the proportional share of any other proprietor thereof resident in the United Kingdom, exclusive of the printer and publisher, and also where the number of such proprietors resident in the United Kingdom shall exceed two, the amount of the proportional shares or interests of such several proprietors whose names shall be specified in such declaration; and every such declaration shall be made and signed by every person named therein as printer or publisher of the newspaper to which such declaration shall relate, and by such of the said persons named therein as proprietors as shall be resident within the United Kingdom; and a declaration of the like import shall be made, signed, and delivered in like manner whenever and so often as any share, interest, or property soever in any newspaper named in any such declaration shall be assigned, transferred, divided, or changed by act of the parties or by operation of law, so that the respective proportional shares or interests of the persons named in any such declaration as proprietors of such newspaper, or either of them, shall respectively become less than the proportional share or interest of any other proprietor thereof, exclusive of the printer and publisher, and also whenever and so often as any printer, publisher, or proprietor named in any such declaration, or the person conducting the actual printing of the newspaper named in any such declaration shall be changed, or shall change his place of abode, and also whenever and so often as the title of any such newspaper or the printing office or the place of publication thereof shall be changed, and also whenever in any case, or on any occasion, or for any purpose, the said commissioners, or any officer of stamp duties authorized in that behalf, shall require such declaration to be made, signed, and delivered, and shall cause notice in writing for that purpose to be served upon any person, or to be left or posted at any place mentioned in the last preceding declaration delivered.

Fresh declaration to be made in certain cases.

*Newspapers
and
Pamphlets.*

Before whom
declarations are
to be made.

Penalty if the
declaration be
false, etc.

as aforesaid, as being a printer, publisher, or proprietor of such newspaper, or as being the place of printing or publishing any such newspaper respectively; and every such declaration shall be made before any one or more of the said commissioners, or before any officer of stamp duties or other person appointed by the said commissioners, either generally or specially in that behalf; and such commissioners or any one of them, and such officer or other person, are and is hereby severally and respectively authorized to take and receive such declaration as aforesaid; and if any person shall knowingly and wilfully sign and make any such declaration in which shall be inserted or set forth the name, addition, or place of abode of any person as a proprietor, publisher, printer, or conductor of the actual printing of any newspaper to which such declaration shall relate, who shall not be a proprietor, printer, or publisher thereof, or from which shall be omitted the name, addition, or place of abode of any proprietor, publisher, printer, or conductor of the actual printing of such newspaper, contrary to the true meaning of this Act, or in which any matter or thing by this Act required to be set forth shall be set forth otherwise than according to the truth, or from which any matter or thing required by this Act to be truly set forth shall be entirely omitted, every such offender being convicted thereof shall be deemed guilty of a misdemeanour.

Sec. 7. If any person shall knowingly and wilfully print or publish, or shall cause to be printed or published, or either as a proprietor or otherwise sell or deliver out any newspaper relating to which such declaration as aforesaid, containing such matters and things as are required by this Act to be therein contained, shall not have been duly signed and made and delivered when and so often as by this Act is required, or any other matter or thing required by this Act to be done or performed shall not have been accordingly done or performed, every person in any such case offending shall forfeit for every such act done the sum of £50 for every day on which any such newspaper shall be printed or published, sold or delivered out, before or until such declaration shall be signed and made and delivered, or before or until such other matter or thing shall be done or performed as by this Act is directed; and every such person shall be disabled from receiving any stamped paper for printing such newspaper until such declaration shall be signed and made and delivered, or until such other matter or thing shall be done and performed.

Penalty for printing, etc., a newspaper, such declaration not having been made.

Sec. 8. All such declarations as aforesaid shall be filed and kept in such manner as the commissioners of stamps and taxes shall direct for the safe custody thereof; and copies thereof, certified to be true copies as by this Act is directed, shall respectively be admitted in all proceedings, civil and criminal, and upon every occasion whatsoever, touching any newspaper mentioned in any such declaration, or touching any publication, matter, or thing contained in any such newspaper, as conclusive evidence of the truth of all such matters set forth in such declaration as are hereby required to be therein set forth, and of their continuance respectively in the same condition down to the time in question, against every person who shall have signed such declaration, unless it shall be proved that previous to such time such person became lunatic, or that previous to the publication in question on such trial such person did duly sign and make a declaration that such person had ceased to be a printer, publisher, or proprietor of such newspaper, and did duly deliver the same to the said commissioners or to such officer as aforesaid, or unless it shall be proved that previous to such occasion as aforesaid a new declaration of the same or a similar nature respectively, or such as may be required by law, was duly signed and made and delivered as aforesaid respecting the same newspaper, in which the person sought to be affected on such trial did not join; and the said commissioners, or the proper authorized officer by whom any such declaration shall be kept

Declarations to be filed, and certified copies to be admitted in evidence against persons making same.

Commissioners, etc., to deliver certified copies of

*Newspapers
and
Pamphlets.*

declarations, and the same to be received in evidence.

After production of the declaration, and a newspaper intitled as therein mentioned, it shall not be necessary to prove the purchase of the paper.

Penalty on unauthorized persons giving certificates, and on commissioners or officers giving false certificates.

Service of legal process at the place of printing or publishing mentioned in the declaration shall

according to the directions of this Act, shall, upon application in writing made to them or him respectively by any person requiring a copy certified according to this Act of any such declaration as aforesaid, in order that the same may be produced in any civil or criminal proceeding, deliver such certified copy or cause the same to be delivered to the person applying for the same upon payment of the sum of 1s., and no more; and in all proceedings and upon all occasions whatsoever a copy of any such declaration certified to be a true copy under the hand of one of the said commissioners or of any officer in whose possession the same shall be, upon proof made that such certificate hath been signed with the handwriting of a person described in or by such certificate as such commissioner or officer, and whom it shall not be necessary to prove to be a commissioner or officer, shall be received in evidence against any and every person named in such declaration as a person making or signing the same, as sufficient proof of such declaration, and that the same was duly signed and made according to this Act, and of the contents thereof; and every such copy so produced and certified shall have the same effect for the purposes of evidence against any and every such person named therein as aforesaid, to all intents whatsoever, as if the original declaration of which the copy so produced and certified shall purport to be a copy had been produced in evidence, and been proved to have been duly signed and made by the person appearing by such copy to have signed and made the same as aforesaid; and whenever a certified copy of any such declaration shall have been produced in evidence as aforesaid against any person having signed and made such declaration, and a newspaper shall afterwards be produced in evidence intitled in the same manner as the newspaper mentioned in such declaration is intitled, and wherein the name of the printer and publisher and the place of printing shall be the same as the name of the printer and publisher and the place of printing mentioned in such declaration, or shall purport to be the same, whether such title, name, and place printed upon such newspaper shall be set forth in the same form of words as is contained in the said declaration, or in any form of words varying therefrom, it shall not be necessary for the plaintiff, informant, or prosecutor in any action, prosecution, or other proceeding, to prove that the newspaper to which such action, prosecution, or other proceeding may relate was purchased of the defendant, or at any house, shop, or office belonging to or occupied by the defendant, or by his servants or workmen, or where he may usually carry on the business of printing or publishing such newspaper, or where the same may be usually sold; and if any person, not being one of the said commissioners or the proper authorized officer, shall give any certificate purporting to be such certificate as aforesaid, or shall presume to certify any of the matters or things by this Act directed to be certified by such commissioner or officer, or which such commissioner or officer is hereby empowered or intrusted to certify; or if any such commissioner or officer shall knowingly and wilfully falsely certify under his hand that any such declaration as is required to be made by this Act was duly signed and made before him, the same not having been so signed and made, or shall knowingly and wilfully falsely certify that any copy of any declarations is a true copy of the declaration of which the same is certified to be such copy, the same not being such true copy, every person so offending shall forfeit the sum of £100 (a).

Sect. 9. In any suit, prosecution, or proceeding, civil or criminal, against any printer, publisher, or proprietor of any newspaper, service at the house or place mentioned in any such declaration as aforesaid as the house or place at which such newspaper is printed or published, or intended so to be, of any notice or other matter required or directed by

(a) As to the recovery and application of penalties, see sects. 27, 28. As to the form of conviction, see sect. 29.

this Act to be given or left, or of any summons, subpoena, rule, order, writ, or process of what nature soever, either to enforce an appearance, or for any other purpose whatsoever, shall be taken to be good and sufficient service thereof respectively upon and against every person named in such declaration as the printer, publisher, or proprietor of the newspaper mentioned in such declaration (a).

*Newspapers
and
Pamphlets.*

be deemed sufficient service (a).

SECT. 10. The commissioners of stamps and taxes shall cause to be entered in a book to be kept at the head office for stamps in Westminster, Edinburgh, and Dublin respectively, the title of every newspaper registered at the said respective offices, and also the names of the printers and publishers thereof as the same appear in the declarations required by this Act to be made relating to such newspapers respectively, and all persons shall have free liberty to search and inspect the said book from time to time during the hours of business at the said offices, without payment of any fee or reward.

Titles of newspapers and names of printers and publishers to be entered in a book, and persons to have liberty to inspect it.

By sect. 12, printers, etc., who have made affidavits under any former Act of the same nature and for the like purposes as the declaration required by this Act, need not make any new declaration under this Act unless required so to do; and any printer, etc., continuing to publish, etc., without making such declaration after the same has been required, is liable to the same penalties and disabilities as if no such declaration had ever been made.

SECTS. 11 AND 12 relate to the giving security for the payment of the duties on advertisements, which have now been abolished by the 16 & 17 Vict. c. 63, s. 5.

SECT. 13. The printer or publisher of every newspaper printed or published in the city of London, Edinburgh, or Dublin, or within twenty miles of any of the said cities respectively, shall, upon every day on which such newspaper shall be published, or on the day next following which shall not be a holiday, between the hours of ten and three on each day, deliver or cause to be delivered to the commissioners of stamps and taxes or to the proper authorized officer, at the head office for stamps in one of the said cities respectively in or nearest to which such newspaper shall be printed or published, one copy of every such newspaper, and of every second or other varied edition or impression thereof so printed or published, with the name and place of abode of the printer or publisher thereof, signed and written thereon, after the same shall be printed, by his proper hand and in his accustomed manner of signing, or by some person appointed and authorized by him for that purpose, and of whose appointment and authority notice in writing, signed by such printer or publisher in the presence of and attested by an officer of stamp duties, shall be given to the said commissioners, or to the officer to whom such copies are to be delivered; and the printer or publisher of every newspaper printed or published in any other place in the United Kingdom shall, upon every day on which such newspaper shall be published, or within three days next following, in like manner between the hours of ten and three, deliver or cause to be delivered to the distributor of stamps or other authorized officer in whose district such newspaper shall be printed or published two copies of every such newspaper, and of every second or other varied edition or impression thereof so printed or published, with the name and place of abode of the printer or publisher

Copies of newspapers shall be delivered to commissioners of stamps and taxes and may be produced in evidence (a).

(a) Service of an order of Court of general gaol delivery, calling upon the editor of a newspaper to answer for contemptuously publishing the proceedings therein, pending a trial, at the office at which the newspaper was published, was held good service

within a similar enactment of the 38 Geo. 3, c. 78, s. 12; and the editor not having appeared, the fine was held properly imposed on him in his absence. (*R. v. Clement*, 4 B. & Ald. 218.)

*Newspapers
and
Pamphlets.*

thereof signed and written thereon in manner aforesaid after the same shall be printed, and the same copies shall be carefully kept by the said commissioners, or by such distributor or officer as aforesaid, in such manner as the said commissioners shall direct; and such printer or publisher shall be entitled to demand and receive from the commissioners, or such distributor or officer, once in every week, the amount of the ordinary price of the newspapers so delivered: and every printer and publisher of such newspaper who shall neglect to deliver or cause to be delivered in manner hereinbefore directed such copy or copies signed as aforesaid, shall for every such neglect respectively forfeit the sum of £20; and in case any person shall make application in writing to the said commissioners, or to such distributor or officer as aforesaid, in order that any newspaper so signed as aforesaid may be produced in evidence in any proceeding, civil or criminal, the said commissioners, or distributor or officer, shall, at the expense of the party applying, at any time within two years from the publication thereof, either cause such newspaper to be produced in the Court in which and at the time when the same is required to be produced, or shall deliver the same to the party applying for the same, taking according to their discretion reasonable security, at the expense of such party, for returning the same to the said commissioners, or such distributor or officer, within a certain period to be fixed by them respectively; and in case by reason that such newspaper shall have been previously applied for in manner aforesaid by any other person the same cannot be produced or cannot be delivered according to any subsequent application, in such case the said commissioners, or such distributor or officer as aforesaid, shall cause the same to be produced or shall deliver the same as soon as they are enabled so to do; and all copies so delivered as aforesaid shall be evidence against every printer, publisher, and proprietor of every such newspaper respectively in all proceedings, civil or criminal, to be commenced and carried on, as well touching such newspaper as any matter or thing therein contained, and touching any other newspaper and any matter or thing therein contained which shall be of the same title, purport, or effect with such copy so delivered as aforesaid, although such copy may vary in some instances or particulars either as to title, purport, or effect; and every printer, publisher, and proprietor of any copy so delivered as aforesaid shall to all intents and purposes be deemed to be the printer, publisher, and proprietor respectively of all newspapers which shall be of the same title, purport, or effect with such copies or impressions so delivered as aforesaid, notwithstanding such variance as aforesaid, unless such printer, publisher, or proprietor respectively shall prove that such newspapers were not printed or published by him, nor by nor with his knowledge or privity: Provided always, that if any printer or publisher of any newspaper which shall not be printed and published in the cities of London, Edinburgh, or Dublin, or within twenty miles of the said cities respectively, shall find it more convenient to cause such copies of such newspaper to be delivered to any other distributor of stamps than the distributor in whose district such newspaper shall be published, and such printer or publisher shall state such matter by petition to the commissioners of stamps and taxes, and pray that he may have liberty to cause such copies to be delivered to such other distributor as he shall so name, at the office of such distributor, it shall be lawful for the said commissioners to order the same accordingly, and from and after the date of such order the place of publication of such newspaper shall for that purpose only be deemed and taken to be within the district of such other distributor until the same shall be otherwise ordered by the said commissioners.

Commissioners
may allow
printer to lodge
his paper with
any distributor.

Name of printer
and other par-
ticulars to be

Sect. 14. At the end of every newspaper, and of any and every supplement sheet or piece of paper, shall be printed the christian name and surname, addition, and place of abode of the printer and publisher of the

same, and also a true description of the house or building wherein the same is actually printed and published respectively, and the day of the week, month, and year on which the same is published; and if any person shall knowingly and wilfully print or publish, or cause to be printed or published, any newspaper or supplement thereto, whereon the several particulars aforesaid shall not be printed, or whereon there shall be printed any false name, addition, place, or day, or whereon there shall be printed any description of the place of printing or publishing such newspaper which shall be different in any respect from the description of the house or building mentioned in the declaration required by this Act to be made relating to such newspaper as the house or building wherein such newspaper is intended to be printed or published, every such person shall for any and every such offence forfeit the sum of £20.

Sects. 15, 16, 17, and 18, relating to the printing, publishing, selling, or sending abroad newspapers not duly stamped are repealed by the 18 Vict. c. 27, s. 1.

Sec. 27. All pecuniary penalties under this Act may be sued or prosecuted for and recovered for the use of his Majesty in the name of his Majesty's attorney-general or solicitor-general in England or Ireland, or of his Majesty's advocate-general or solicitor-general in Scotland, or of the solicitor of stamps and taxes in England or Scotland, or of the solicitor of stamps in Ireland, or of any person authorized to sue or prosecute for the same, by writing under the hands of the commissioners of stamps and taxes, or in the name of any officer of stamp duties, by action of debt, bill, plaint, or information in the Court of Exchequer at Westminster in respect of any penalty incurred in England, and in the Court of Exchequer in Scotland in respect of any penalty incurred in Scotland, and in the Court of Exchequer in Dublin, or by civil bill in the Court of the recorder, chairman, or assistant barrister within whose local jurisdiction any offence shall have been committed, in respect of any penalty incurred in Ireland, or in respect of any penalty not exceeding £20 by information or complaint before one or more justice or justices of the peace in any part of the United Kingdom, in manner by this Act provided: and it shall not be lawful for any person other than as aforesaid to inform, sue, or prosecute for any such penalty as aforesaid, except where, in the case of apprehending an offender by any person appointed or authorized by the commissioners of stamps and taxes in that behalf, it is by this Act otherwise expressly provided and allowed; and it shall be lawful in all cases for the commissioners of stamps and taxes, either before or after any proceedings commenced for recovery of any such penalty, to mitigate or compound any such penalty as the said commissioners shall think fit, and to stay any such proceedings after the same shall have been commenced, and whether judgment may have been obtained for such penalty or not, on payment of part only of any such penalty, with or without costs, or on payment only of the costs incurred in such proceeding, or of any part thereof, or on such other terms as such commissioners shall judge reasonable: Provided always, that in no such proceeding as aforesaid shall any essoign, protection, wager of law, nor more than one imparlance be allowed; and all pecuniary penalties imposed by or incurred under this Act, by whom or in whose name soever the same shall be sued or prosecuted for or recovered, shall go and be applied to the use of his Majesty, and shall be deemed to be and shall be accounted for as part of his Majesty's revenue arising from stamp duties, anything in any Act contained, or any law or usage to the contrary in anywise notwithstanding: Provided always, that it shall be lawful for the commissioners of stamps and taxes, at their discretion, to give all or any part of such penalties as rewards to any person or persons who shall have

*Newspapers
and
Pamphlets.*

printed on newspapers (a).

Recovery of penalties.

No essoign, etc.

Application of penalties.

(a) The prior enactments on this subject were the 38 Geo. 3, c. 78, s. 10, and 5 Will. 4, c. 2.

*Newspapers
and
Pamphlets.*

detected the offenders, or given information which may have led to their prosecution and conviction.

Mode of proceeding for the recovery of penalties before justices of the peace.

Sect. 28. It shall be lawful for any justice of the peace within whose jurisdiction any offence the penalty for which shall not exceed £20 shall be committed against this Act, and such justice is hereby required, upon any information exhibited or complaint made by any person duly authorized in that behalf, to summon the party accused and also the witnesses on either side to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose, and whether the party accused shall appear or not it shall be lawful for the said justice or any other justice present at the time and place appointed for such appearance to proceed to examine into the fact, and upon due proof made thereof to the satisfaction of any such justice, either by confession of the party accused or by the oath of one or more credible witness or witnesses, to convict such offender, and to give judgment for the penalty and costs to be assessed by any such justice, and to issue his warrant for levying such penalty and costs, and also the reasonable costs and charges attending the distress, on the goods of such offender, and to cause sale to be made thereof, in case the same shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods sufficient cannot be found to answer such penalty and costs, such justice, or any other justice of the district or place in which such conviction shall take place, shall commit such offender to the common gaol or house of correction, there to remain for any time not exceeding three calendar months, nor less than one calendar month, unless such penalty, costs, and charges shall be sooner paid and satisfied; and if any person shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices at the next general or quarter sessions of the peace for the district or place where the offence shall have been committed which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions, and it shall be lawful for such justices at such sessions to examine witnesses on oath, and finally to hear and determine such appeal; and in case any conviction of such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person convicted to pay such costs occasioned by such appeal as to them shall seem meet: Provided always, that no person convicted before any such justice shall be entitled or permitted to appeal against such conviction in manner aforesaid unless within three days after such conviction made he shall enter into a recognizance, with two sufficient sureties, before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also such further costs as shall be awarded in case such conviction shall be affirmed on such appeal: Provided also, that no such proceedings so to be taken as aforesaid shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocacy, or reduction, or by any other writ or process whatsoever, into any superior or other Court or jurisdiction in any part of the United Kingdom, any law, statute, or usage to the contrary notwithstanding; and provided also, that it shall be lawful for any justice of the peace before whom any person shall be convicted of any offence against this Act to mitigate as he shall see fit any pecuniary penalty by this Act imposed in cases where such justice shall see cause so to do; provided that all reasonable costs and charges incurred as well in discovering as in prosecuting for such offence shall be always allowed, over and above the sum to which

Appeal to sessions (a).

Notice of appeal.

Sessions may give costs.

Persons convicted to give security on appeal.

No *certiorari*.

Justices may mitigate penalties.

(a) See in general, tit. "*Appeal*," Vol. I.

such penalty shall be mitigated, and provided that such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges, anything herein contained to the contrary notwithstanding."

Sect. 29. The justice before whom any person shall be convicted of any offence under this Act, shall cause the conviction to be made out in the manner and form following, or in any other form of words to the like effect, *mutatis mutandis* (that is to say) :—

Form of conviction.

County of— } Be it remembered, that on the day of
to wit. } in the year of our Lord , at , A. B.
of , was duly convicted before me, C. D., Esquire, one of his Majesty's
justices of the peace for the county of , in pursuance of an Act passed
in the seventh year of the reign of king William the fourth, intituled [title of this
Act], for that the said A. B. [here state the offence], contrary to the form of the
statute in that case made and provided, for which offence I do adjudge that the
said A. B. hath forfeited the sum of , and [if the justice mitigate the
penalty] which sum of I do hereby mitigate to the sum of
over and above the sum of , which I do allow to E. F. for his reason-
able costs and expenses in prosecuting this conviction. Given under my hand and
seal this day of .

Sect. 30. It shall be lawful for any justice of the peace to summon any person to appear before such justice or before any other justice of the peace to give evidence touching any offence against the provisions of this Act; and if any person who shall be so summoned, shall neglect or refuse to appear, according to the exigency of such summons, at the time and place therein for that purpose named, without reasonable matter of excuse to be stated upon oath, and proved to the satisfaction of such justice before whom any information or complaint shall be depending or shall have been made touching any such offence as aforesaid, or if such person having appeared shall refuse to give evidence respecting any such offence or other matter as aforesaid, and every person so offending shall forfeit £10.

For compelling attendance of witnesses before justices.

Sect. 31. In any proceeding either in any Court, or before any justice of the peace, or otherwise, under this Act, or for summoning any party, witness, or other person, in or for the purpose of any such proceeding, it shall not be necessary that the original or any other process or summons, or any notice, demand, or order whatsoever, should be personally served on the defendant, or person to be summoned, but it shall be sufficient that such process, summons, notice, demand, or order, or a copy thereof respectively, be left at the last known place of abode of such defendant or person to be summoned.

What shall be deemed good service of process, etc., in proceedings under this Act.

Sect. 32 repeals the previous enactments relating to stamp duties on newspapers and the duties on advertisements.

SCHEDULE (A).

The following shall be deemed and taken to be newspapers chargeable with the said duties; viz.—

Any paper containing public news, intelligence, or occurrences printed in any part of the United Kingdom to be dispersed and made public (a).

(a) By the 16 & 17 Vict. c. 71, no paper containing any public news, intelligence, or occurrences, shall be deemed to be a newspaper within the meaning of the said Act, or of any Act relating to the stamp duties on

newspapers, unless the same shall be published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such parts or numbers.

*Nuisance,
Public.*

Also any paper printed in any part of the United Kingdom weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

Exemptions.

Any paper called 'Police Gazette,' or 'Hue and Cry,' published in Great Britain by authority of the secretary of state, or in Ireland by the authority of the lord lieutenant.

Daily accounts or bills of goods imported and exported, or warrants or certificates for the delivery of goods, and the weekly bills of mortality, and also papers containing any lists of prices current or of the state of the markets, or any account of the arrival, sailing, or other circumstances relating to merchant ships or vessels, or any other matter wholly of a commercial nature, provided such bills, lists, or accounts do not contain any other matter than what hath been usually comprised therein.

The 3 & 4 Will. 4, c. 23, abolished the duties on pamphlets; and the 16 & 17 Vict. c. 63, s. 5, abolished those on advertisements.

By the 18 Vict. c. 27, s. 1, it is enacted that it shall not be compulsory (except for the purpose of free transmission by the post) to print any newspaper on paper stamped for denoting the duties imposed by law on newspapers, and no person shall be subject or liable to any penalty or forfeiture for printing, publishing, selling, or having in his possession any unstamped newspaper.

As to libels in newspapers and pamphlets, see "*Libel*," ante, 328.

As to the forgery of the stamps on newspapers, see tit. "*Forgery*," Vol. II.

As to the postage of newspapers, see "*Post-Office*," post.

Nuisance, Public.

I. *What is a Nuisance, and who liable for*, p. 1027.

In general, p. 1027.

By carrying on Unwholesome or Pernicious Trades, etc., p. 1027.

By Steam Engines, p. 1030.

By keeping Disorderly Houses, etc., p. 1030.

By Bathing, p. 1031.

By being a Common Scold, p. 1031.

By spreading Infections, p. 1031.

By keeping Ferocious Animals, p. 1032.

II. *Remedy for, by Removal*, p. 1033.

III. *Remedy for, by Indictment, Information, or Presentment*, p. 1068.

IV. *Punishment for*, p. 1069.

V. *Forms*, p. 1070.

I. What is a Nuisance, and who liable for.

In general.—A common nuisance seems to be an offence against the public, either by doing a thing which tends to the annoyance of all the Queen's subjects, or by neglecting to do a thing which the common good requires. (1 *Hawk.* c. 75, s. 1; 4 *Bl. Com.* 166.)

Annoyances to the prejudice of particular persons, are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them. (1 *Hawk.* c. 75, s. 2, *post*, 239.)

And from hence it clearly follows, that no indictment for a nuisance can be good, which lays it to the damage of private persons only; as where it accuses a man of surcharging such a common, or of enclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a watercourse running to such a mill, to the damage of such a person and his tenants, without saying of *all the liege subjects of the Queen.* (1 *Hawk.* c. 75, s. 3.)

Yet, it hath been said, that an indictment of a *common scold* is good, although it conclude to the common nuisance of *divers*, instead of *all*, the Queen's subjects; perhaps, for this reason (says Mr. *Hawkins*), because a common scold cannot but be a common nuisance. (1 *Hawk.* c. 75, s. 5.)

To constitute a nuisance, no actual injury need have happened, it is sufficient if the thing complained of be likely to produce it. (*R. v. Vandyke*, 4 *M. & Sel.* 73, *post*, 1031.)

It seems to have been considered in the case of *R. v. Russell* (6 *B. & Cres.* 566), that if the thing complained of furnishes upon the whole a greater convenience to the public than it takes away, no indictment lies for a nuisance. (Lord *Tenterden*, C.J., *diss.* And see *R. v. Morris*, 1 *B. & Adol.* 441; *R. v. Pease*, 4 *B. & Ad.* 30; 1 *N. & M.* 690, *S. C.*) But this doctrine was overruled in the case of *R. v. Ward*, 4 *Ad. & E.* 384; tit. "*Rivers*," Vol. V.; and see *R. v. Tindall*, 1 *Nev. & P.* 719; 6 *Ad. & Ell.* 143, *S. C.*)

It has been established, in several cases, that no length of time will legitimate a public nuisance. (*Weld v. Hornby*, 7 *East*, 195; *Per Lord Ellenborough*, C.J., in *R. v. Cross*, 3 *Campb.* 227; *Coupland v. Hardingham*, *Id.* 398; *Vooght v. Winch*, 2 *B. & Ald.* 662; *Uhad v. Tilsed*, 5 *Moore*, 185; 2 *B. & B.* 403, *S. C.*; *Bliss v. Hall*, 4 *Bingh. N. C.* 183.)

To Highways, Bridges, Rivers, etc.—Permitting a public highway or bridge to get out of repair, is a public nuisance, because it is an annoyance to all the Queen's subjects who may pass that way. So doing anything which may have the effect of obstructing a public highway or navigable river, is a public nuisance for the same reason. As to what may be considered as nuisances to highways, rivers, and bridges, see tits. "*Highways*," Vol. II., "*Bridge*," Vol. I., and "*River*," Vol. V.

By carrying on Unwholesome or Offensive Trades or Occupations.—Any trade, however innocent in itself and useful in its objects, which is carried on in an improper place, to the injury of the health or quiet of a neighbourhood, and not of a few individuals only (*R. v. Loyd*, 4 *Esp.* 200), is a public nuisance; and if the effect, by the stench produced in a manufactory, be such as to make the comfortable enjoyment of life and property impossible to a number of persons, though not to render the adjacent places of residence absolutely unwholesome, the same will be a nuisance. (*R. v. White*, 1 *Burr.* 333.)

1. What is a Nuisance, and who liable for.

What is, in general.

Difference between a public and private nuisance.

Actual injury not necessary.

A nuisance, though a public benefit done.

Length of time will not legalize.

To highways, etc.

Offensive trades, etc.

1. *What is a Nuisance, and who liable for.*

Two persons were indicted for making great quantities of *noisome, offensive, and stinking liquors*, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis, whereby the air was impregnated with noisome and offensive smells; and it was held by the Court to be a nuisance. The word *noisome* comes in the place of the Latin *nocivus*, and means not only disagreeable, but hurtful. And Lord Mansfield, C.J., said, it is not necessary, to constitute the offence, that the smell should be *unwholesome*; it is enough if it render the enjoyment of life and property *uncomfortable*. (*R. v. White & Ward*, 1 Burr. 333.) So the creation of smells offensive to the senses, though not unwholesome, may be a nuisance. (See *R. v. Neil*, 2 C. & P. 485; *R. v. Davey*, 5 Esp. 217.) (a).

Offensive business in a place where offensive ones before carried on.

It seems, setting up a noxious manufactory in a neighbourhood where other offensive trades have been long borne with, unless the inconvenience to the public be greatly increased, will not be deemed a public nuisance. (*R. v. Neville, Peake*, 91; *R. v. Watts, Moody & M.* 281.) But see *Crossley v. Lightowler* (36 L. J., Chan. 584; L. R. 2 Ch. 478), where it was held that a nuisance cannot be justified by the existence of similar nuisances.

Nor will the continuing a noxious trade which has been carried on at the same place for nearly fifty years (*R. v. Neville, Peake*, 93); though indeed, as we have just seen, no length of time will legalize a public nuisance, *ante*, 1027.

And it has been decided at *Nisi Prius*, that if a party set up a noxious trade remote from habitations and public roads, and after that new houses are built, and new roads constructed near it, the party may continue his trade without being subject to an indictment, although it be a nuisance to persons inhabiting such houses or passing along such new roads. (*R. v. Cross*, 2 C. & P. 483. And see *R. v. Neville, Peake*, 91, 93.) But it would be otherwise if the noxious trade be much increased after the houses erected or roads made. (*Id.*)

But it would seem that in these cases though the party could not be indicted, it is another question whether or not an action might be supported against him; and it seems it may if he has not uninterruptedly used the annoyance for twenty years. (See *Elliotson v. Feetham*, 2 Bingh. N. C. 134; *Flight v. Thomas*, 10 Ad. & E. 590; and *Bliss v. Hall*, 4 Bingh. N. C., 183; 5 Scott, 500; 6 Dowl. 442, S. C.)

Slaughtering horses, etc.

By a private statute, all houses for the slaughtering of horses within one thousand yards of a certain workhouse were to be deemed public nuisances, and removed; but, if they existed before the Act, the owners were to receive compensation: it was held, that if an indictment be found at common law, with counts on that Act, the defendant may be convicted if he so carried on the trade as to make it a public nuisance, and that he is not then entitled to any compensation. (*R. v. Watts*, 2 C. & P. 486; *M. & M.* 281, S. C. See as to slaughtering horses, tit. "Horses," Vol. II.)

Negligently blasting stone in a quarry, and thereby projecting large pieces of stone, so as to endanger the safety of persons in houses, and on the highways adjoining the quarry, is a misdemeanour indictable at common law. (*Reg. v. Mutters*, 34 L. J., M. C. 22.)

(a) It hath been holden, that it is no common nuisance to *make candles* in a town, because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because, whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town;

and surely the trade of a brewer is as necessary as that of a chandler; and yet it seems to be agreed, that a brew-house erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance: and so in like case may a *glass-house* or a *swine-yard*. (1 Hawk. c. 75; s. 10.)

In *R. v. Moore* (3 B. & Ad. 184), defendant kept a place for shooting pigeons, and at targets, etc., and in consequence a vast number of the lower orders were constantly outside and about the place and neighbourhood, for the purpose of shooting at the stray pigeons, and by firing off guns and otherwise created a great nuisance in the neighbourhood. It was considered the defendant was liable to be indicted, as he was the cause of the assemblages, etc. (And see *R. v. Pedley*, 2 Nev. & M. 627; 1 Ad. & Ell. 822, S. C. post, 1032.)

I. *What is a Nuisance, and who liable for.*

Shooting-grounds, etc.

Erecting gunpowder mills or keeping gunpowder magazines near a town is a nuisance at common law. (1 Russ. 439, 4th ed. And see further, "*Gunpowder*," Vol. II.)

Gunpowder.

And so is the keeping of large and excessive quantities of dangerous and explosive substances, such as wood-naphtha in a warehouse near to streets, highways, and dwelling-houses to the danger and alarm of the public. (*Reg. v. Lister*, Dear. & B. C. C. 209: 26 L. J., M. C. 196.)

Upon the trial of such an indictment, it is a question of fact for the jury whether the keeping and depositing or the manufacturing of such substances really does create danger to life and property as alleged, and the liability to ignition *ab extra* may properly be taken into their consideration. (*Ib.*)

The jury found that naphtha is very inflammable, more so than spirits or even than gunpowder, and if inflamed, water could not put out the fire, unless the water was applied in enormous proportions relatively to the quantity of inflamed naphtha, and that a fire arising and communicating with the quantity kept upon the premises could not be quenched, and would produce very disastrous consequences. The jury also found that it was the practice never to allow any candles or fire or gaslight to enter the warehouse, and so long as that continued the naphtha would not produce danger. Held, *Pollock*, C.B. (*dissentiente* as to facts only), that these facts were sufficient to support the indictment, and justified a verdict of guilty. (*Ib.*)

And see "*Petroleum Act*," 31 & 32 Vict. c. 56.

So putting on board a ship combustible materials without giving due notice of the contents will be a misdemeanour. (1 Russ. 441, 4th ed. And see *Williams v. East India Company*, 3 East, 192, 201.)

Combustible materials on board a ship.

As to fireworks, see tit. "*Fireworks*," "*Highways*," Vol. II.

Fireworks.

A person was indicted for making great noises in the night with a *speaking trumpet*, to the disturbance of the neighbourhood; and it was held by the Court to be a nuisance. (*R. v. Smith*, 2 Str. 704.)

Noises in the night.

It hath been resolved that neither an old nor a new dovecot is a common nuisance; but perhaps, if a tenant hath erected one without a licence of the lord of the manor, the lord may have an action on the case against him. (1 Hawk. c. 75, s. 8.)

A dovecot.

The showing a monster for money is a misdemeanour. (*Herring v. Walrond*, 2 Cha. Ca. 110.) The exhibition in this case was a monstrous child that had died, and was embalmed to be kept for show; but it was ordered by the Lord Chancellor to be buried.

A monster.

A herbalist, who had publicly exposed and exhibited in his shop on a highway a picture of a man naked to his waist and covered with eruptive sores, so as to constitute an offensive and disgusting exhibition, was held guilty of a nuisance, although there was nothing immoral or indecent in the picture, and his motive was innocent. (*Reg. v. Grey*, 4 F. & F. 73.)

When the legislature declares an act to be a public nuisance, the person doing the act is indictable. (*Reg. v. Crawshaw*, 9 W. R. 38; 3 L. T., N. S. 510.) By the 10 & 11 Will. 4, c. 17, lotteries not specially sanctioned by Act of Parliament are declared to be public nuisances, and the

1. *What is a Nuisance, and who liable for.* 42 Geo. 3, c. 119, contains a similar declaration with regard to lotteries called little-goes. Held, on motion in arrest of judgment on an indictment containing counts framed under these statutes for keeping a lottery, that the counts were good, and the offence indictable. (*Ib.*)

Steam engines.

Steam Engines.]—The 1 & 2 Geo. 4, c. 41, s. 1, intituled “An Act for giving greater Facility in the Prosecution and Abatement of Nuisances arising from Furnaces used, and in the working of Steam Engines,” after reciting, that “whereas great inconvenience has arisen, and a great degree of injury has been and is now sustained by his Majesty’s subjects, in various parts of the united empire, from the improper construction, as well as from the negligent use of furnaces employed in the working of engines by steam; and whereas by law every such nuisance, being of a public nature, is abateable as such by indictment; but the expense attending the prosecution thereof has deterred parties suffering thereby from seeking the remedy given by law:” it is enacted, “that it shall and may be lawful for the Court by which judgment ought to be pronounced in case of conviction on any such indictment, to award such costs as shall be deemed proper and reasonable to the prosecutor or prosecutors, to be paid by the party or parties so convicted as aforesaid, such award to be made either before or at the time of pronouncing final judgment, as to the Court may seem fit.”

Court may award costs.

Court may make order for preventing the nuisance.

Sect. 2. That if it shall appear to the Court by which judgment ought to be pronounced in case of conviction on any such indictment, that the grievance may be remedied by altering the construction of the furnace so employed in the working of engines by steam, it shall be lawful to the Court, without the consent of the prosecutor, to make such order touching the premises as shall be by the said Court thought expedient for preventing the nuisance in future, before passing final sentence upon the defendant or defendants so convicted.

Proviso for owners of furnaces erected solely for working of mines, etc.

Sect. 3. The provisions of this Act, as far as they relate to the payment of costs, and the alteration of furnaces, shall not extend or be construed to extend to the owners or proprietors or occupiers of any furnaces of steam engines erected solely for the purpose of working mines of different descriptions, or employed solely in the smelting of ores and minerals, or in the manufacturing of the produce of such ores or minerals on or immediately adjoining the premises where they are raised.

Disorderly houses.

By keeping Disorderly or Bawdy Houses, etc.]—We have already seen that keeping disorderly houses and places of resort of an improper kind is a common nuisance, and indictable as such. (See *ante*, “*Disorderly Houses*,” Vol. I.)

Bawdy-houses, gaming-houses, and stages for rope-dancers.

Common bawdy-houses are indictable as common nuisances: and it hath been said, that all common stages for rope-dancers (*R. v. Hall*, 1 Mod. 76), and also all common gaming-houses are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together a great number of disorderly persons. (1 Hawk. c. 75, s. 6; 4 Bl. Com. 167; *R. v. Rogier*, 2 D. & R. 431; 1 B. & C. 272, S. C.; and see further, tit. “*Disorderly House*,” Vol. I., and tit. “*Gaming*,” Vol. II.)

Playhouses.

Also, it has been holden that a common playhouse unlicensed or improperly conducted may be a nuisance, if it draw together such a number of coaches or people as prove generally inconvenient to the places adjacent (1 Hawk. c. 75, s. 7); but, generally, playhouses are not in themselves nuisances. (*Id.* See *post*, “*Players*.”)

Lewdness.

By Lewdness.]—Open and notorious lewdness is a common nuisance, and indictable as such. Tit. “*Disorderly House*,” Vol. I.

By Bathing.—It is an established principle, that whatever openly outrages decency, and is injurious to public morals, is a misdemeanour at common law. (4 *Bl. Com.* 65; 1 *Hawk. c.* 5, s. 4; 1 *East's P. C. c.* 1, s. 1.) It is therefore indictable for a person to bathe in an indecent manner near a highway, or in any part of a public river. In *R. v. Crunden*, 2 *Campb.* 89, it was held an indictable offence for a man to undress himself on the beach, and to bathe in the sea near inhabited houses, from which he may be distinctly seen, although these houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place in question. See form of indictment, 2 *Chit. C. L.* 41.

By the Vagrant Act, a person may be treated as a rogue and vagabond who shall wilfully, openly, lewdly, and obscenely expose his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female. See tit. "*Vagrant*," Vol. V.

In *Blundell v. Catterall*, 5 *B. & Ald.* 268, it was held that the public at large have no common law right to bathe in the sea, and, as incident thereto, of crossing the shore on foot or with bathing machines for that purpose.

1. *What is a Nuisance, and who liable for.*

When an offence.

Public no right to bathe, etc., in sea.

By being a Common Scold.—A common scold is a public nuisance to her neighbourhood, and may be indicted for the offence. (4 *Bl. Com.* 168; 1 *Hawk. c.* 75, s. 14.) And she may be convicted without setting forth the particulars in the indictment. (2 *Hawk. c.* 25, s. 59.) Nevertheless, the offence must be set forth with convenient certainty; and the indictment must conclude not only *against the peace*, but to the common nuisance of divers of her Majesty's liege subjects. And in the case of *R. v. Margaret Cooper* (2 *Str.* 1246), the defendant was convicted on an indictment "*for being a common and turbulent brawler, and sower of discord amongst her quiet and honest neighbours, so that she hath stirred, moved, and incited divers strifes, controversies, quarrels, and disputes amongst his Majesty's liege people, against the peace, etc.*" It was moved in arrest of judgment that the charge was too general, and did not amount to being either a barrator or common scold, which are the only instances in which a general charge will be sufficient. It was likewise objected, that if the words did amount to a description of a scold, yet it should be laid to be to the common nuisance of her neighbours; for every degree of scolding is not indictable. And the Court was of opinion that the judgment ought to be arrested on both exceptions, for none of the words here used are the technical words, and it must be laid to be to the common nuisance (a).

Common scold.

As to the punishment, see *post*, 1069.

By spreading Infections.—A person may be indicted for unlawfully and injuriously carrying a child infected with the smallpox along a public highway in which persons are passing, and near to the habitations of the king's subjects. (*R. v. Vantandillo*, 4 *M. & Sel.* 73.)

And it is an indictable offence in an apothecary unlawfully and injuriously to inoculate children with the smallpox, and, while they are sick of it, unlawfully and injuriously to cause them to be carried along a public street. (*R. v. Burnett*, 4 *M. & Sel.* 272.) *Le Blanc, J.*, in passing sentence, observed that the introduction of vaccination did not render the practice of inoculation for the smallpox unlawful; but that in

Persons infected with smallpox.

(a) It seemeth to savour not much of gallantry that our ancestors supposed none but women could be guilty of this offence; for the technical words denoting the same, whilst the

proceedings were in Latin, were all of the feminine gender; as *rixatrix*, *calumniatrix*, *communis pugnatrice*, *communis pacis perturbatrix*, and the like.

1. *What is a Nuisance, and who liable for.* all times it was unlawful and an indictable offence to expose persons infected with contagious disorders, and therefore liable to communicate them to the public in a public place of resort. The defendant was sentenced to six months' imprisonment.

See as to quarantine, *post*, tit. "*Plague and Quarantine*."

By keeping ferocious animals.

By keeping Ferocious Animals.]—Keeping ferocious animals without proper control is a public nuisance, and indictable accordingly.

A dog that kills sheep.

If a man have a dog that kills sheep, that is not a public nuisance; but the owner of the dog (knowing thereof) is liable to an action; but if he be ignorant of such quality he shall not be punished for this killing. (*Dyer*, 25; *Het.* 171; tit. "*Dogs*," Vol. I.)

See the 28 & 29 Vict. c. 60, by which knowledge by the owner of the mischievous propensity of his dog is no longer necessary in civil actions.

An unruly horse.

If a man has an unruly horse in his stable, and leaves open the stable door, whereby the horse gets forth and doth mischief, an action lies against the master. (*Mitchel v. Allestree*, 1 Vent. 295.)

A bull.

In the case of *Buxendin v. Sharp*, the plaintiff declared that the defendant kept a bull that used to run at men, but did not say that the defendant knew of this quality; it was adjudged that an action did not lie, unless it did appear that the master knew of this quality. (2 Salk. 662.)

Beasts *feræ naturæ*.

There is a difference between beasts that are *feræ naturæ*, as lions and tigers, which a man must always keep up at his peril, and beasts that are *mansuetæ naturæ*, and break through the tameness of their nature, such as oxen and horses. In the latter case an action lies, if the owner have had notice of the quality of the beast; but in the former case an action lies without such notice. (*R. v. Huggins*, 2 Lord Raym. 1583.)

But after such wild beasts have escaped from their keeper, so as to regain their natural liberty, he that kept them before shall not answer for the damage they shall commit after he has lost them, and they have resumed their wild nature. (*Mitchel v. Allestree*, 1 Vent. 295.)

A mastiff.

A mastiff going in the street unmuzzled, from the ferocity of his nature being dangerous, and a cause of terror to her Majesty's subjects, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large. (See further, tit. "*Dogs*," Vol. I.)

Who liable for.

Who liable for a Nuisance.]—This may be partly collected from the preceding pages.

If the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued or created during the term.

So he is if he let a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance occur for want of such care on the part of the tenant.

If a party buy the reversion during a tenancy, and the tenant afterwards during his term erect a nuisance, the reversioner is not liable for it; but if such reversioner relet, or, having an opportunity to determine the tenancy, omit to do so, allowing the nuisance to continue, he is liable for such continuance. (*Per Littledale, J., R. v. Pedley*, 1 Ad. & Ell. 822.)

And such purchaser is liable to be indicted for the continuing of the nuisance, if the original reversioner would have been liable, though the purchaser has had no opportunity of putting an end to the tenant's interest, or abating the nuisance. (*R. v. Pedley*, 3 Nev. & M. 627; 1 Adol. & Ell. 822, S. C.)

II. Remedy for, by Removal, etc.

2. *Remedy for, by Removal, etc.*

1. *At Common Law*, p. 1033.

2. *By Statute*, p. 1034.

1. REMEDY BY REMOVAL AT COMMON LAW.

It seemeth to be certain that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house, erected in a highway, or the like; for if one whose estate is or may be prejudiced by a private nuisance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entering into another's ground and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, it cannot but follow, *a fortiori*, that any one may lawfully destroy a common nuisance. And as the law is now holden, it seems that in a plea justifying the removal of the nuisance, a man need not show that he did as little damage as might be. (1 *Hawk. c. 75, s. 12*; *Lodie v. Arnold*, 2 *Salk.* 458; *Raikes v. Townsend*, 2 *Smith*, 9.)

Any person may remove a common nuisance.

It is the duty of a person who enters upon the land of another to abate a nuisance to do it in the way least injurious to the owner of the land entered, and where there is an alternate way of abating a nuisance which involves an interference with the property of an innocent person or a wrongdoer, the interference must be with the property of the wrongdoer. (*Roberts v. Rose*, 4 *H. & C.* 103; 35 *L. J., Ex.* 62.)

But although he may remove the nuisance, yet he cannot remove the materials, or convert them to his own use. (*Dalt. c. 50.*)

What he may do on the removal.

Removing them to a distance and not to an adjacent place, might be a conversion. (*Forsdick v. Collins*, 1 *Stark.* 173, and see *Houghton v. Butler*, 4 *T. R.* 364.)

But so much of the thing only as causes the nuisance ought to be removed: as if a house be built too high, only so much of it as is too high should be pulled down. (*Baten's case*, 9 *Rep.* 53; *God.* 221; *R. v. Papineau*, 2 *Str.* 686.)

And in the case of a glass-house, the judgment was to abate the nuisance, not by pulling the house down, but only to prevent its being again used as such. (*Co. Ent.* 92.)

But a thing that *will be* a nuisance cannot be abated before it actually becomes a nuisance. (*R. v. Wharton*, 12 *Mod.* 510.)

No abatement of that which will become a nuisance.

In *Earl Lonsdale v. Nelson* (2 *B. & C.* 311; 3 *D. & R.* 556, *S. C.*), *Best, J.*, said, "Nuisances by an act of *commission* are committed in defiance of those whom such nuisances injure, and the injured party may abate them without notice to the person who committed them; but there is no decided case which sanctions the abatement, by an individual, of nuisances from *omission*, except that of cutting the branches of trees which overhang a public road, or the private property of the person who cuts them. The permitting those branches to extend so far beyond the soil of the owner of the trees, is an unequivocal act of negligence, which distinguishes this case from most of the other cases that have occurred. The security of lives and property may sometimes require so speedy a remedy as not to allow time to call on the person on whose property the mischief has arisen, to remedy it; in such cases, an individual would be justified in abating a nuisance from omission without notice. In all other cases of such nuisances, persons should not take the law into their own hands, but follow the advice of Lord *Hale*, and appeal to a Court of justice."

Whether there can be an abatement of a nuisance arising from acts of omission.

A judge on his own view may order a nuisance to be abated (*Hall's*

Judge, etc., abating.

2. *Remedy
for, by
Removal, etc.*

case, 1 Mod. 76); or a writ may be obtained to the sheriff directing him to abate it. (*R. v. Newdigate, Comb. 10.*)

As to the power of the Court of Equity to abate, and when it will interfere by injunction to prevent a public nuisance, see *Attorney-General v. Forbes*, 2 Myl. & Cr. 123; and see *Att.-Gen. v. Sleuver*, 18 Ves. 211.)

2. REMEDY BY REMOVAL BY STATUTE.

[18 & 19 Vict. c. 116; 18 & 19 Vict. c. 121; 23 & 24 Vict. c. 77; 26 & 27 Vict. c. 117; 29 & 30 Vict. c. 41; 29 & 30 Vict. c. 90.]

By the "Nuisances Removal and Diseases Prevention Act" power is given to the local authorities therein constituted to compel the removal of nuisances injurious to the public health, and to enforce other measures of a sanitary tendency.

By the 18 & 19 Vict. c. 116, entitled "An Act for the better Prevention of Diseases" (a) [14th August, 1855], after reciting that the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," in so far as the same relate to the prevention or mitigation of epidemic, endemic, or contagious diseases, are defective, and it is expedient to substitute other provisions more effectual in that behalf: it is enacted as follows:

Short title.

Sect. 1. This Act may be cited for all purposes as the "Diseases Prevention Act, 1855."

Sects. 2 and 3 are repealed by the 23 & 24 Vict. c. 77, s. 10, *post*, 1058.

Power of entry.

Sect. 4. The local authority and their officers shall have power of entry for the purposes of this Act, and for executing or superintending the execution of the regulations and directions of the general board (b) issued under this Act.

Power to Privy Council to issue orders that provisions herein contained for prevention of diseases may be put in force.

Sect. 5. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or contagious disease, the lords and others of her Majesty's most honourable Privy Council, or any three or more of them (the lord president of the Council or one of her Majesty's principal secretaries of state being one), may, by order or orders to be by them from time to time made, direct that the provisions herein contained for the prevention of diseases be put in force in England, or in such parts thereof as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts to which any such order or orders extend, and in like manner, revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such order of her Majesty's Privy Council, or of any members thereof, as aforesaid, shall be certified under the hand of the clerk in ordinary of her Majesty's Privy Council, and shall be published in the *London Gazette*; and such publication shall be conclusive evidence of such order, to all intents and purposes.

Power to general board of health to issue regulations to carry out such provisions.

Sect. 6. From time to time after the issuing of any such order as aforesaid, and whilst the same continues in force, the general board of health (c) may issue directions and regulations, as the said board think fit—

(a) By the 21 & 22 Vict. c. 97, s. 1, the powers vested in the general board of health under this Act are transferred to the Privy Council, and the provisions of the Act having reference to the general board of health, and the regulations and directions

issued by them are to be construed as referring to the Privy Council, and the regulations and directions issued by them.

(b) See note (a), *supra*.

(c) See note (a), *supra*.

For the speedy interment of the dead :

2. *Remedy
for, by
Removal, etc.*

For house to house visitation :

For the dispensing of medicines, guarding against the spread of disease, and affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases such medical aid and such accommodation as may be required :

And from time to time, in like manner, may revoke, renew, and alter any such directions and regulations as to the said board appears expedient, to extend to all parts in which the provisions of this Act for the prevention of disease shall for the time being be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts, and then to such parts as therein are specified ; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall, under such order, be applicable to the same parts.

Local extent and duration of regulations of general board.

Sect. 7. Every such direction and regulation as aforesaid, when issued, shall be published in the *London Gazette*, and the *Gazette* in which such direction or regulation was published shall be conclusive evidence of the direction or regulation so published, to all intents and purposes.

Publication of such regulations.

Sect. 8. The local authority shall superintend and see to the execution of such directions and regulations, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating such disease, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require.

The local authority to see to the execution of such regulations, etc. ;

Sect. 9. The local authority may from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such direction and regulation.

and may direct prosecutions for violating the same.

Sect. 10. Every order of her Majesty's privy council, and every direction and regulation of the general board of health (*a*), under this Act, shall be laid before both houses of Parliament, forthwith upon the issuing thereof, if Parliament be then sitting, and if not then within fourteen days next after the commencement of the then next session of Parliament.

Orders of council, directions, and regulations to be laid before Parliament.

Sect. 11. Orders in council issued in pursuance of this Act for putting in force the provisions for the prevention of disease in the said Nuisances Removal and Diseases Prevention Acts (*b*) contained, in Great Britain, may extend to parts and arms of the sea lying within the jurisdiction of the admiralty ; and the board of health for England may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea aforesaid as upon inland waters.

Order in council may extend to parts and arms of the sea.

Sect. 12. Whenever, in compliance with any regulation of the general board of health (*c*), which they may be empowered to make under this Act, any medical officer appointed under and by virtue of the laws for the time being for the relief of the poor shall perform any medical service on board of any vessel, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the union or place for which he is appointed, and such charges

Medical officer of unions and others entitled to costs of attending sick on board vessels, when required by orders of general board of health.

(*a*) See note (*a*), *ante*, 1034.

post, 1036.

(*b*) The Acts here referred to were repealed by the 18 & 19 Vict. c. 121,

(*c*) See note (*a*), *ante*, 1034.

2. *Remedy
for, by
Removal, etc.*

shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services shall be rendered by any medical practitioner who is not a union or parish officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on ship-board, to be paid as aforesaid; and in case of dispute in respect of such charges, such dispute may, where the charges do not exceed £20, be determined summarily, at the place where the dispute arises, as in case of seamen's wages not exceeding £50, according to the provisions of the law in that behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or condition as those in respect of whom the charge is made.

Sect. 13 related to the authentication of directions and regulations of the general board of health, and is no longer applicable. (See note (a), *ante*, 1034.)

Penalty for obstructing execution of Act.

Sect. 14. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, and whosoever wilfully violates any direction or regulation issued by the general board of health (a) as aforesaid, shall be liable for every such offence to a penalty not exceeding £5, to be appropriated in or towards the defraying the expenses of executing this Act.

Certain provisions of "Nuisances Removal Act" to apply to this Act.

Sect. 15. The provisions of any general Act in force for the removal of nuisances, with regard to the service of notices, the proof of orders or resolutions of the local authority, and the recovery of penalties, shall extend and apply to this Act.

11 & 12 Vict. c. 123.

12 & 13 Vict. c. 111.

By the 18 & 19 Vict. c. 121 (b), entitled "An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849 [14th August, 1855]," after reciting that the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by the "Nuisances Removal and Diseases Prevention Amendment Act, 1849," are defective, and it is expedient to repeal the said Acts as far as relates to England, and to substitute other provisions more effectual in that behalf, it is enacted as follows:—

Recited Acts repealed as far as relates to England, except as to proceedings commenced.

Sect. 1. From and after the passing of this Act, the said Acts are by this section repealed, as far as relates to England: Provided always, that all proceedings commenced or taken under the said Acts, and not yet completed, may be proceeded with under the said Acts; and all contracts or works undertaken by virtue of the said Acts shall continue and be as effectual as if the said Acts had not been repealed.

Interpretation of certain terms used in this Act.

Sect. 2. In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context (that is to say), the word "place" includes any city, borough, district under the "Public Health Act," parish, township, or hamlet, or part of any such city, borough, district, town, parish, township, or hamlet; the word "guardians" includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter or any part of the matter requiring the cogni-

(a) See note (a), *ante*, 1034.

(b) By the 21 & 22 Vict. c. 97, the powers vested in the general board

of health by this Act are transferred to the privy council.

zance of any such officer arises; the word "borough," and the expressions "mayor, aldermen, and burgesses," "council," and "borough fund," have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high bailiff, borough reeve, or other chief officer, and burgesses or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of or at the disposal of such chief officers and governing bodies; the expression "Improvement Act" means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes; the word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery, or under any order thereof, or who would receive the same if such property were let to a tenant; the word "premises" extends to all messuages, lands, or tenements, whether open or enclosed, whether built on or not, and whether public or private; the word "parish" includes every township or place separately maintaining its poor, or separately maintaining its own highways; the expression "quarter sessions" means the Court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough; the word "person," and words applying to any person or individual, apply to and include corporations, whether aggregate or sole; and the expression "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

A person to whom an owner of premises resident abroad sent a power of attorney authorizing him to receive the rents, is not thereby constituted owner, so as to render him personally liable for the costs and expenses of the abatement of a nuisance on the premises previously to the receipt of his authority. (*Blything Union (Guardians) v. Warton*, 3 B. & S. 352; 32 L. J., M. C. 132.)

PART I.

And with respect to the constitution of the local authority for the execution of this Act, the expenses of its execution, the description of nuisances that may be dealt with under it, and the powers of entry for the purposes of the Act, be it enacted thus:

Sect. 3 is repealed by the 23 & 24 Vict. c. 77, s. 1, *post*, 1056.

Sect. 4. On any vacancy in such nuisances removal committee arising from death, change of residence, or otherwise, notice shall be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry, and fill up such vacancy by election; and until such vacancy is filled up the remaining members of the committee may act in all respects as if their number was complete.

As to filling up vacancies.

Sect. 5. The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, whereof two shall be a quorum; and such local authority, or their committee, may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf.

Power to local authority to appoint committees.

2. *Remedy for, by Removal, etc.*

2. *Remedy
for, by
Removal, etc.*

What are deemed
nuisances under
this Act.

Sects. 6 and 7 are repealed by the 23 & 24 Vict. c. 77, s. 1, *post*, 1056.

Sect. 8. The word "nuisances" under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit, so foul as to be a nuisance or injurious to health :

Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit which is a nuisance or injurious to health :

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby.

Sect. 9 is repealed by the 23 & 24 Vict. c. 77, s. 1, *post*, 1056.

Notice of nuisances to be given to local authority, etc., to ground proceedings.

Sect. 10. Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons ; the sanitary inspector or any paid officer under the said local authority ; two or more inhabitant householders of the parish or place to which the notice relates ; the relieving officer of the union or parish ; any constable or any officer of the constabulary or police force of the district or place ; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses ; and the local authority may take cognizance of any such nuisance after entry made as hereinafter provided, or in conformity with any Improvement Act under which the inspector has been appointed.

Power of entry to local authority or their officer.

Sect. 11. The local authority shall have power of entry for the following purposes of this Act, and under the following conditions :—

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening (a) ; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand require the person having the custody of the premises to admit the local authority or their officer (b) ; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand authorize the local authority or their officers to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

(a) As to the hour of entry, see the 29 & 30 Vict. c. 90, s. 31, *post*, 1064.

(b) As to the duration of the order,

see the 29 & 30 Vict. c. 90, s. 31, *post*, 1064.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be.

2. *Remedy
for, by
Removal, etc.*

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this Act.

For this purpose the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice.

When a nuisance has been ascertained by the local authority to exist on private premises, and a notice has been served under the 29 & 30 Vict. c. 90, s. 21, it is not necessary in order to found proceedings before magistrates for the abatement under s. 12 of the 18 & 19 Vict. c. 121, that a notice of the intended application should have been served under this section also. (*Amys v. Creed*, L. R., 3 Q. B. 122; 38 L. J., M. C. 22.)

PART II.

With regard to the removal of nuisances, be it enacted thus :

SECT. 12. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

Proceedings by local authority before justices in the case of nuisances likely to recur, etc.

If proved to justices that nuisance exists, etc., they shall issue order for abatement, etc.

See *Amys v. Creed*, *supra*. As to the mode of proceeding under this section, see the 29 & 30 Vict. c. 90, s. 21, *post*, 1062.

The proceeding before justices given by the 18 & 19 Vict. c. 121, s. 12, for the removal and prevention of nuisances, is confined to cases where the cause and effect of such nuisances exist within the area of the jurisdiction of the local authority. Therefore, where J., C., and Co., brewers at R., poured their refuse into a river at that place, and the consequential result of that act was the pollution of the water of the river at D., and the local authority for D. proceeded before the justices for the abatement of the nuisance, it was held, that, as the cause arose out of the jurisdiction of the local authority, the justices had no power to hear and determine the question. (*Reg. v. Cotton*, 28 L. J., M. C. 22; 1 *El. & El.* 203.)

Where the owner of a market allowed sheep to be penned there, and

2. *Remedy
for, by
Removal, etc.*

he found the hurdles for the pens, and derived a profit in addition to the toll on the sheep, and the sheep droppings created a nuisance on the part where they were penned, it was held, that the owner of the market was liable to an order for the removal of the nuisance, as being the person "by whose act, default, permission, or sufferance," the nuisance arose. (*Draper v. Sperring*, 30 L. J., M. C. 225; 10 C. B., N. S. 113.)

B. owned property on which were several houses let to weekly tenants. From these houses a quantity of sewage flowed into cesspools also on his property. Sewage from other houses also flowed into these cesspools, and in rainy weather they overflowed, the sewage thus escaping passing through pipes laid under the public highway into an open ditch or dike in a field not belonging to B., where it caused the nuisance complained of: held, that the justices properly declined to make an order on B. for the abatement of the nuisance under this section. (*Hendon (Guardians) v. Bowles*, 17 L. T., N. S. 597.)

Where, as in the above case, a number of persons, each doing what by itself is not a nuisance, join in accumulating a mass of refuse which becomes offensive, each individual would seem not to be liable to an order under this section; but where what any one of these persons does is in itself a nuisance, he may be properly ordered to abate it.

Where the occupiers of a brewery had for upwards of twenty years discharged the refuse from it into a barrel drain, which, after passing along a turnpike road, entered land belonging to another proprietor, and the proprietor of this land did not get rid of the refuse as his predecessors had done, and it became, after it had reached his land, a nuisance, it was held, that the occupier of the brewery was a person by whose act, default, permission, or sufferance, the nuisance was caused, and that an order of justices obtained under this section, directing him to abate the nuisance by cutting off all communication between the drains of his premises and the barrel drain was valid. (*Brown v. Bussell*, 37 L. J., M. C. 65; L. R., 3 Q. B. 251.)

The defendant, having obtained the necessary consent, made a drain leading from his own premises through adjoining land. This drain, which received the refuse from several houses and pigstys belonging to the defendant, and let to yearly tenants, polluted the water of neighbouring streams, and became a nuisance: held, that the defendant must be taken to be a person by whose act, default, permission, or sufferance, the nuisance was caused, and might be ordered to abate and discontinue the nuisance. (*Ib.*)

Justices' order
for abatement.

Sect. 13. By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, white-wash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for

Prohibitive order
against future
nuisance.

human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

2. *Remedy for, by Removal, etc.*

Sect. 14. Any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than 10s. per day during his default; and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding 20s. per day during such contrary action; and the local authority may, under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person on whom the order is made as hereinafter provided.

Penalty for contravention of order of abatement, and of prohibition.

Local authority may enter and remove or abate nuisance.

Penalties imposed under this section for disobeying an order to abate a nuisance under sect. 13 cannot be enforced without previously summoning the offender under sect. 20. (*Reg. v. Jenkins*, 32 L. J., M. C. 1.)

An order to abate a nuisance, by removing offensive privies, was directed to the "owner, or to the nuisance removal committee," the owner being directed to remove the same within seven days, and if such order was not complied with the committee was authorized and required to enter and remove it. The seven days elapsed, and neither the owner nor the committee removed the nuisance. Held, that the justices had power to fine the owner under this section for disobedience of the order, notwithstanding that it was addressed to the nuisance committee as well as to the owner. (*Tomlins v. Great Stanmore*, 12 L. T., N. S. 118.)

The sanitary officer under a local board of health, at the instance of a person aggrieved, obtained an order of justices, requiring P. to cleanse a drain. He did not obey the order, and the local board refused to take any steps to enforce it. Held, that the party aggrieved was not entitled to a *mandamus* to the local board to compel them to abate the nuisance under this section. (*Bassett, ex parte*, 7 El. & B. 280; *S. C. nom. In re Local Board of Ham*, 26 L. J., M. C. 64. See also, *Tinkler v. Board of Works for Wandsworth District*, 3 Jur., N. S. 1292.)

Sect. 15. Any such order of prohibition may be appealed against as provided in this Act.

Appeal against order of prohibition.

Sect. 16. When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order, the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done, nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted.

Appeal against order of abatement when structural works are required.

The local authority is not bound, for the purpose of executing structural works for the abatement of a public nuisance, to obtain an order of justices under sect. 16, this section applying only to the abatement by structural works of nuisances upon private premises. (*Reg. v. Middleton Nuisance Removal Committee*, 1 El. & El. 98.)

The drainage of a gaol which had been duly declared to be a borough

2. *Remedy
for, by
Removal, etc.*

gaol was carried by open drains through lands not belonging to the corporation. Upon the complaint of the nuisances removal committee, the justices made an order under sect. 12 upon the corporation to abate the nuisance, and do such works as were necessary to abate the same. The nuisance could only be removed by the construction of a covered drain through the lands. Held, that the order was an order to abate the nuisance, and not an order for "structural works" within this section, and therefore there was no appeal to the quarter sessions against it. (*Liverpool (Mayor, etc.), ex parte*, 27 L. J., M. C. 89; 8 El. & Bl. 537.)

If persons causing nuisance cannot be found, local authority to execute order at once.

Sect. 17. Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act.

Manure, etc., to be sold.

Sect. 18. Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing; and the money arising from the sale retained by the local authority, and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing.

Costs and expenses of works to be paid by person on whom order is made, or owner or occupier.

Sect. 19. All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any county or superior Court, or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof.

An agreement for the lease of premises stipulated that the landlord should keep the premises in good and substantial repair, and should pay and discharge all rates, taxes, tithes, and other charges payable in respect of the premises. A piece of ornamental water formed part of the demised premises, in which a deposit of foul mud accumulated, which became a nuisance. The local authority took proceedings against the tenant, and obtained an order of justices against him, as the person by whose default the nuisance arose, for the removal of the nuisance. The tenant, previously to the making of the order, but after the com-

mencement of the proceedings against him, entered into an agreement for the cleansing of the piece of water, and upon the completion of the work paid to the contractor £100, and brought an action against the landlord for breach of his agreement to pay all rates, taxes, and charges payable in respect of the premises, and for money paid to his use. Held, that the landlord was not liable, under the agreement to repair, to cleanse the piece of water, and that the expense of removing the nuisance was not a charge within the meaning of the agreement. (*Bird v. Elwes*, 37 *L. J.*, *Ex.* 91; *L. R.*, 3 *Ex.* 225.)

2. *Remedy..*
for, by
Removal, etc.

Sect. 20. Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale.

Proceedings before justices to recover expenses.

Sect. 21. All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in enclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways.

Surveyors of highways to cleanse ditches, etc., paying owners, etc., for damages.

Sect. 22. Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous, without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the 5 & 6 Will. 4, c. 50, ss. 67, 68 (a); and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in

Power to local authority to cover and improve open ditches, etc.

(a) See these sections, Vol. II., tit. "Highways."

2. *Remedy
for, by
Removal, etc.*

force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in England: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed one shilling in the pound on the assessment to the highway rate, if any.

The local authority in laying down a new sewer under this section have to ascertain the necessity for making a new sewer, and, that being ascertained, it is for them to exercise their judgment in what direction the new sewer should be made through the adjoining land, and so long as they exercise an honest discretion, without misconduct or negligence, their judgment cannot be overruled in a Court of law, and they are not bound to follow the course of the old sewer. (*The Earl of Derby v. Bury Improvement Commissioners*, 38 L. J., Ex. 100, Ex. Ch., overruling the judgment of the Court below.)

The Court of Chancery will restrain the members of a highway board (being the local authority) from allowing any fresh communications to be made with a sewer, constructed by their predecessors in office, which occasions a nuisance to the inhabitants of the adjoining parish by draining into a stream flowing through such parish, although from the limited nature of their powers no order can be made against the board which will have the effect of compelling them to abate the nuisance altogether by stopping up the sewer, and ceasing to drain into the stream. (*Attorney-General v. Richmond*, L. R., 2 Eq. 306.)

The local authority in a district who have rendered innocuous a drain passing through their district, conveying away the filth of houses in a higher district, have no power to assess the owners of those houses for payment of the expenses, though those houses use this drain. The power of assessment of a local authority is confined to property within the district for which they act. (*Reg. v. Tatham*, 8 El. & Bl. 915; S. C. nom. *Reg. v. Warner*, 27 L. J., M. C. 144.)

In the parish of H. four districts (M., M. S., H., and C.) were formed for the purpose of drainage. In the year 1855 sewers were made for draining the M. S. district, and the house of B. was assessed in respect of the expenses of making the sewers; B. compounded, and paid the sum at which he was charged. In the year 1856 the M. district was drained, and the result of the works made in the two districts was to increase a nuisance which before existed in the H. district. Accordingly, in 1859 it became necessary to make new sewers in that district, and it was resolved by the local authority that the drainage of the four districts should be considered as one system. The works were made, and the house of B. was again assessed in respect of the expense of making the new works: held, that the local authority had power to charge B., as his house might be said to use the sewer into which its refuse flowed. (*Reg. v. Bodkin*, 30 L. J., M. C. 38.)

Where sewers and works had been made by the local authority, under the powers given them by this section, it was held, that they were bound to assess the houses, buildings, etc., using such sewers or works, before resorting to the highway rates, in the manner pointed out by section 7 (now repealed), in order to defray the expenses incurred. (*Reg. v. Gosse*, 30 L. J., M. C. 41.)

The local authority, for the purpose of rendering innocuous a ditch by which the filth was conveyed from houses and which constituted a nuisance, constructed a sewer, and for the purpose of defraying the expense assessed the houses then using the ditch or the sewer at an annual sum amounting to sixpence in the pound on the assessment to the highway rate. By a separate resolution passed afterwards on the same day, it

was resolved that the annual payment might be compounded for, within two months after service of notice of assessment, by payment of the amount of four years' annual payments; after one year from the date of the assessment, by payment of the amount of three and a half years' annual payments; after two years by payment of the amount of three years' annual payments; after three or more years by payment of the amount of two years' annual payments, all arrears in every case having been first paid up; in default of such composition the payment to be perpetual. Notice of the assessment containing also, on the same paper, a notice of the subsequent resolution, was served upon the owners and occupiers. Payment being refused by an occupier, justices were applied to for a warrant of distress, which they refused to grant. On motion of this Court for an order upon them to do so: held, that supposing the resolution respecting the composition to be illegal (and, semble that it was not), it was a matter distinct from the rate, which therefore was not invalidated by it. That the rate was not bad for being confined to houses then using the ditch or sewer, and although it was not published or allowed as required in the case of a highway rate by the 5 & 6 Will. 4, c. 50, s. 27. (*Reg. v. Warner*, 6 *El. & Bl.* 395.)

By the Highway Act (5 & 6 Will. 4, c. 50, s. 105), the right is given to any person aggrieved by any rate to appeal to the next quarter sessions, first giving to the opposite party notice within fourteen days after such rate shall have been made: held, first, that the fourteen days for giving notice of appeal against an assessment under the 18 & 19 Vict. c. 121, ran from the service of the notice of assessment on the premises assessed, and not from the time when the amount was fixed by the local authority; secondly, that the proviso in the 22nd section limited the annual assessment only to one shilling in the pound on the rateable value as assessed to the highway rate, but did not prohibit the whole assessment of the premises in respect of one structure to be distributed over several years, from exceeding that amount. (*Reg. v. The Nuisances Removal Committee of Middleton*, 28 *L. J., M. C.* 41; 1 *El. & El.* 98.)

The words, "the assessment to the highway rate," are to be construed as meaning the rateable value of the premises assessed to the highway rate. (*Reg. v. Middleton*, 1 *El. & El.* 98.)

Sec. 23. Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water, shall be fouled, shall forfeit for every such offence the sum of £200.

Penalty for causing water to be corrupted by gas washings.

Where a similar provision was contained in a local Act, it was held, that the penalty was not confined to the case of water wilfully or knowingly fouled, but extended to the case of water in a well fouled by water escaping through a fissure in the gas-tank, occasioned by mining operations in the vicinity. (*Hipkins v. The Birmingham, etc., Gaslight Co.*, 29 *L. J., Ex.* 169; 30 *L. J., Ex.* 60.)

Sec. 24. Such penalty may be recovered, with full costs of suit, in any of the superior Courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Penalty to be sued for in superior Courts within six months.

Sec. 25. In addition to the said penalty of £200 (and whether such

Daily penalty during the con-

2. *Remedy
for, by
Removal, etc.*

continuance of the
offence.

penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of £20 (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all moneys recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Sect. 26 is repealed by the 26 & 27 Vict. c. 117, s. 1, *post*, 1060.

As to nuisances
arising in cases
of noxious
trades, busi-
nesses, processes,
or manufactures.

Sect. 27. If any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than £5 nor less than 40s., and upon a second conviction for such offence the sum of £10, and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of £200: Provided always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal, and shall appeal accordingly: Provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district.

By the 29 & 30 Vict. c. 90, s. 18, *post*, 1061, a requisition in writing, signed by ten inhabitants, is to be equivalent to a certificate under this section.

Reference to
superior Court at
the option of the
party complained
against.

Sect. 28. Provided also, that if, upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take

proceedings at law or in equity in her Majesty's superior Courts for preventing or abating the nuisance complained of.

2. *Remedy
for, by
Removal, etc.*

Sect. 29. Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding 40s.

On certificate of medical officer to local authority that house is overcrowded, proceedings may be taken to abate the same.

Sect. 30. The local authority may, within the area of their jurisdiction (a), direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act.

Local authority to order costs of prosecution to be paid out of the rates.

PART III.

And with regard to procedure under this Act, be it enacted, that—

Sect. 31. Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles from the office of the inspector then by a registered letter through the post.

Service of notices, summonses, and orders.

Sect. 32. Copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same.

Proof of resolutions of local authority.

Sect. 33. Where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable.

As to proceedings taken against several persons for the same offence.

Sect. 34. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

One or more joint owners or occupiers may be proceeded against alone.

(a) See *Reg. v. Cotton*, ante, 1039, and also sect. 22, and the cases bearing upon it.

2. *Remedy
for, by
Removal, etc.*

Designation of
"Owner" or
"occupier."

Penalty for ob-
structing execu-
tion of this Act.

Penalty on occu-
pier obstructing
owner.

Penalties and
expenses re-
coverable under
11 & 12 Vict.
c. 43.

Proceedings not
to be quashed
for want of form.

Appeals under
this Act to be to
quarter sessions.

Sect. 35. Whenever, in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

Sect. 36. Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or willfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding £5.

Sect. 37. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act: and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding £5 for every day afterwards during the continuance of such non-compliance.

Sect. 38. Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act.

Sect. 39. No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior Courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Sect. 40. Appeals under this Act shall be to the Court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said Court, and to abide the order of and pay such costs as shall be awarded by the justices at such Court or any adjournment thereof; and the said Court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard;

provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; provided also, that in any case of appeal the Court of quarter sessions may, if they think fit, state the facts specially for the determination of her Majesty's Court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said Court of Queen's Bench.

Sunday is to be counted in the two days though it falls on the last day; and therefore where notice of appeal was given on Friday, but the recognizance was not entered into till the following Monday, it was held that the sessions could not hear the appeal. (*Ex parte Simpin*, 29 L. J., M. C. 23; 2 El. & El. 392.)

Sect. 41. The forms contained in the schedule to this Act annexed, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended.

2. *Remedy for, by Removal, etc.*

Forms to be used as in schedule.

Sect. 42. The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being.

As to protection of local authority and its officers.

Sect. 43. Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers or of drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act intitled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis, and from steam vessels above London Bridge," or the "Common Lodging-Houses Acts," the "Act for the Regulation of Municipal Corporations," the "Public Health Act," or any improvement Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any bye-laws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging-House Acts, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act.

Act not to impair jurisdiction of sewers commissioners, or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act.

Sect. 44. Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal; and the provisions of this Act shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals.

Act not to affect navigation of rivers or canals.

Sect. 45. No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of Parliament, or in cases where any company or individual are entitled for their

Saving as to rights of mill-owners, etc.

2. *Remedy
for, by
Removal, etc.*

Schedules.

Short title.

own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person.

Sect. 46. In citing this Act in other Acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words the "Nuisances Removal Act for England, 1855."

SCHEDULE OF FORMS.

FORM (A.).

Order of Justices for Admission of Officer of Local Authority to inspect private Premises.

Whereas [describe the local authority] have by their officer [naming him] made application to me A. B., one of her Majesty's justices of the peace having jurisdiction in and for [describe the place], and the said officer has made oath to me of his belief that a nuisance, within the meaning of the "Nuisances Removal Act for England, 1855," viz. [describe nuisance], exists on private premises at [describe situation of premises so as to identify them], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act, and refused :

Now, therefore, I the said A. B. do hereby require you to admit the said [name the local authority], [or the officer of the said (local authority)], for the purpose of inspecting the said premises.

Dated this day of 18 .

A. B.

FORM (B.).

Notice of Nuisance.

To the local authority (describing it).

I [or we], the person aggrieved by the nuisance hereinafter described [or the undersigned and described inhabitant householders, sanitary inspector, or other officer (describing him)], do hereby give you notice, that there exists in or upon [a dwelling house, yard, etc., as the case may be], situate at [giving such description as may be sufficient to identify the premises], in the parish of in your district, under the "Nuisances Removal Act, 1855," the following nuisance, videlicet [describing the nuisance, as the case may be; for instance, a dwelling-house or building a nuisance or injurious to health for want of a privy or drain or sufficient means of ventilation, or so dilapidated or so filthy as to be a nuisance or injurious to health, or, for further instance, a ditch or drain so foul as to be a nuisance or injurious to health, or an accumulation of a nuisance or injurious to health, etc., or swine so kept as to be a nuisance or injurious to health]; and that such nuisance is caused by [naming the person by whose act or default the nuisance is caused, or by some person unknown].

Dated this day of in the year of our Lord one thousand eight hundred and .

[Signed by Complainant under Section 10.]

FORM (C.).

Notice to Owner or Occupier of Entry for Examination.

To the owner [or occupier, as the case may be] of [describe the premises situate at] [insert a description sufficient to identify the premises].

Take notice, that, under the "Nuisances Removal Act for England, 1855," the [local authority, naming it] in whose district under the said Act the above premises are situate, have received a notice from [name complainant], stating that in or upon the said premises [insert the cause of nuisance as set forth in the notice].

And further take notice, that after the expiration of twenty-four hours from the service of this notice, the [local authority] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of in the year of our Lord one thousand eight hundred and .

A. B.,

The officer appointed by the [local authority] to take proceedings under the "Nuisances Removal Act for England, 1855."

FORM (D.).

Summons.

To the owner or occupier of [describe premises] situate at [insert such a description as may be sufficient to identify the premises] or to A. B. of .

County of [or] You are required to appear before two of her
borough of , etc., Majesty's justices of the peace [or, one of the magis-
or, district of or trates of the police Courts of the metropolis, or the
as the case may be] to stipendiary magistrate] of the county [or other juris-
wit. diction] of at the petty sessions [or
Court] holden at on the day of
next, at the hour of in the noon, to answer the complaint
this day made to me by [or by on behalf of]
[naming the local authority, as the case may be], that in or upon the premises
above mentioned [or in or upon certain premises situate at No. in the
street in the parish of , or such other descrip-
tion or reference as may be sufficient to identify the premises], in their district,
under the "Nuisances Removal Act for England, 1855," the following nui-
sance exists [describing it, as the case may be], and that the said nuisance is
caused by the act or default of the occupier [or owner] of the said premises, or
by you A. B. [or in case the nuisance be discontinued, but likely to be repeated,
say, there existed recently, to wit, on or about the day of
on the premises, the following nuisance [describe the nuisance], and
that the said nuisance was caused [etc.], and although the same has since the
said last-mentioned day been removed or discontinued, there is reasonable
ground to consider that the same or the like nuisance is likely to recur on the
said premises].

Given under the hand of me, J. P., Esquire, one of her Majesty's justices of the peace acting in and for the [jurisdiction] stated in the margin, or one of the magistrates of the police Courts of the metropolis, or stipendiary magistrate of day of in the year of our Lord one thousand eight hundred and .

2. Remedy
for, by
Removal, etc.

Schedules.

2. *Remedy*
for, by
Removal, etc.

FORM (E.).

Schedules.

Order of Justices for Removal of Nuisances by Owner, etc.

To the owner [or occupier] of [describe the premises] situate [give such description as may be sufficient to identify the premises], or to A. B. of
or to [giving name of the local authority], or to their servants or agents, and to all whom it may concern.

County of [or] Whereas on the day of
borough, etc., of [or] complaint was made before [Esquire,
or district of one of her Majesty's justices of the peace acting in
or as the case may be.] and for the county [or other jurisdiction] stated in
the margin [or before the undersigned, one of the magistrates of the police
Courts of the metropolis, or as the case may be] by [or by] on
behalf of] [the local authority, naming it, as the case may be], that in or upon
certain premises situate at in the district under the "Nuisances
Removal Act for England, 1855," of the complaints above named, the following
nuisance then existed [describing it]; and that the said nuisance was caused
by the act or default of the owner [or occupier] of the said premises [or was
caused by A. B.] (If the nuisance have been removed, say, the following
nuisance existed on or about [the day the nuisance was ascertained to exist],
and that the said nuisance was caused, etc., and although the same is now
removed, the same or the like nuisance is likely to recur on the same premises.)

And whereas the owner [or occupier] within the meaning of
the said "Nuisances Removal Act, 1855" [or the said A. B.] hath this day
appeared before us justices, being two of her Majesty's justices in and for
[or] sitting in petty sessions at their usual place of meeting [or
before me, the said magistrate of the police Courts of the metropolis, or as the
case may be], to answer the matter of the said complaint [or in case the party
charged do not appear, say], And whereas it hath been this day proved to our
[or my] satisfaction that a true copy of a summons requiring the owner [or
occupier] of the said premises [or the said A. B.] to appear this day before us
[or me] hath been duly served according to the said Act :

Now upon proof here had before us [or me] that the nuisance so complained
of doth exist on the said premises, and that the same is caused by the act or
default of the owner [or occupier] of the said premises [or by the said A. B.],
we [or I], in pursuance of the said Act, do order the said owner [or occupier,
or A. B.] within [specify the time] from the service of this order or a true copy
thereof according to the said Act [here specify the works to be done, as, for
instance, to cleanse, whitewash, purify, and disinfect the said dwelling-house ;
or, for further instance, to construct a privy or drain, etc. ; or, for further in-
stance, to cleanse or to cover or to fill up the said cesspool, etc.], so that the
same shall no longer be a nuisance or injurious to health as aforesaid.

[And if it appear to the justices that the nuisance is likely to recur on the
premises, say] And we [or I] being satisfied that, notwithstanding the said
cause or causes of nuisances may be removed under this order, the same is or are
likely to recur, do therefore prohibit the said owner [or occupier, or A. B.] from
[here insert the matter of the prohibition, as, for instance, from using the said
house or building for human habitation until the same, in our judgment, is ren-
dered fit for that purpose].

And if the above order for abatement be not complied with [or if the above
order of prohibition be infringed], then we [or I] do authorize and require you
the said [local authority, naming it] from time to time to enter upon the said
premises, and to do all such works, matters, and things as may be necessary for
carrying this order into full execution according to the Act aforesaid.

In case the nuisance were removed before the complaint, say [Now, upon
proof here had before us that at or recently before the time of making the said
complaint, to wit, on as aforesaid, the cause of nuisance com-
plained of did exist on the said premises, but that the same hath since been
removed, yet, notwithstanding such removal, we [or I], being satisfied that it is
likely that the same or the like nuisance will recur on the said premises, do

hereby prohibit [order of prohibition]; and if this order of prohibition be infringed, then we [or I] [order on local authority to do works].

2. *Remedy
for, by
Removal, etc.*

Schedules.

Given under the hands and seals of us, two of her Majesty's justices of the peace in and for [or the hand and seal of me, one of the magistrates of the police Courts of the metropolis, or as the case may be], this day of , in the year of our Lord one thousand eight hundred and .

FORM (F.).

Order of Justices for Removal of Nuisance by Local Authority.

To the town council, etc., as the case may be.

County, etc., } Whereas [recite complaint of nuisance as in last form].
to wit. }

And whereas it hath been now proved to our [or my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [as the case may be]: Now we [or I], in pursuance of the said Act, do order the said [local authority, naming it], forthwith to [here specify the works to be done].

Given, etc.

FORM (G.).

Order to permit Execution of Works by Owners.

County of } Whereas complaint hath been made to me, E. F.,
[or Borough of } Esquire, one of her Majesty's justices of the peace
or Metropolitan Police } in and for the county [or borough, etc.] of
District, or as the case } [or one of the magistrates of the police
may be], to wit. } courts of the metropolis, or as the case may be, or
one of her Majesty's justices of the peace, as the case may be, of the county of
, by A. B., owner within the meaning of the "Nuisances Removal Act for England, 1855," of certain premises, to wit, a dwelling house
[or building, or as the case may be], situate at [insert such a description of
the premises as may be sufficient to identify them], in the parish of

in the said county [or borough, etc.] that C. D., the occupier of the said premises, doth prevent the said A. B. from obeying and carrying into effect the provisions of the said Act, in this, to wit, that he the said C. D. [here describe the act of prevention generally according to the circumstances; for instance thus, doth refuse to quit the said house, the same having by the order of justices been declared unfit for human habitation, or doth prevent the said A. B. from cleansing or whitewashing or purifying the said dwelling house, or erecting a privy or drain, or breaking an aperture for ventilation, or cleansing a drain, ditch, gutter, watercourse, privy, urinal, cesspool, or ashpit, which is a nuisance or injurious to health]: and whereas the said C. D. has been summoned to answer the said complaint, and has not shown sufficient cause against the same, and it appears to me that [describe the act or works to be done] is necessary for the purpose of enabling the said A. B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C. D. do permit the said A. B. [describe the act or works to be done] in the manner required by the said Act.

Given under my hand and seal, this day of
in the year of our Lord one thousand eight hundred and

E. F.

(L.S.)

2. Remedy
for, by
Removal, etc.

FORM (H.).

Schedules.

Summons for Nonpayment of Costs, Expenses, or Penalties. (Sect. 20.)

To [describe the person
from whom the costs, expenses, and penalties are due].

County of } You are required to appear before two of her Majesty's
or borough of } justices of the peace [or one of the magistrates of
or district of } the police courts of the metropolis, or the stipendi-
to wit. } ary magistrates] of the county [or other jurisdic-
tion] of } at the petty sessions [or court] holden at
on the } day of } next, at the hour of
in the } noon, to answer the complaint this day made to me by
[or by } on behalf of] [naming the local autho-
rity], that the sum of } pounds, being costs and expenses incurred
by you under and in relation to a certain complaint touching [describe the
nuisance], and an order of [describe the person making the order] duly made
in pursuance of the Nuisances Removal Act for England, 1855, [if penalties
are due, add, and also the sum of } being the amount of penalties
payable by you for disobedience of the said order,] remains unpaid and due
from you.

Given under the hand of me, J. P., Esquire, one of her Majesty's justices of
the peace acting in and for the [jurisdiction stated in the margin] [or one of
the magistrates of the police courts of the metropolis, or stipendiary magistrate
of } the } day of } in the year of
our Lord one thousand eight hundred and

FORM (I.).

Order for Payment of Costs, Expenses, and Penalties. (Sect. 20.)

To [name the person on
whom the order is made].

County, etc., } Whereas complaint has been made before us [or me] for that
to wit. } [recite cause of complaint].

And whereas the said [naming the person against whom the complaint is
made] has this day appeared before us the said justices [or before me the said
magistrate of the police courts of the metropolis, or as the case may be], to
answer this matter of the said complaint: [or, in case the party charged do
not appear, say],

And whereas it has been this day satisfactorily proved to us [or me] that a
true copy of the summons requiring the said [naming person charged] to appear
before us [or me] this day hath been duly served according to the said Act;
now, having heard the matter of the said complaint, we [or I] do adjudge the
said [naming the person charged] to pay forthwith [or by instalments of
payable respectively on or before the } to the

said [naming the person or local authority to whom the costs adjudged are
payable], the sum of } for costs in this behalf, and to [naming the
person or authority to whom the expenses are payable] the sum of }

for expenses in this behalf [if penalties are due, add, and the sum of
for penalties incurred in relation to the premises], together
with the sum of } being the charges attending the application for
this order and proceedings thereon; and if the said several sums, amounting in
the whole to } [or if any one of the said instalments] be not paid
within fourteen days after the same is due as aforesaid, we [or I] hereby order
that the same be levied by distress and sale of the goods and chattels of the said

, and in default of sufficient distress in that behalf adjudge the
said } to be imprisoned in the common gaol [or house of correc-
tion, as the case may be], at } in the said county [or as the case
may be], for the space of such time, not exceeding three calendar months, as the
justices may think fit, unless the said several sums [or sum], and all costs and
charges of the said distress [and of the commitment and carrying of the said

may be], *to the said house of correction or common gaol, or as the case*
shall be sooner paid.

Given under our [or my] hands, this _____ day of
 in the year of our Lord one thousand eight hundred and _____
 in the [county, or as the case may be,] aforesaid.

2. Remedy
 for, by
 Removal, etc.

FORM (K).

Warrant of Distress.

To the constable of _____ and to all other peace officers in the said
 county [or as the case may be].

Whereas on _____ last past complaint was made before the undersigned,
 two of her Majesty's justices of the peace in and for the said county of [or as the
 case may be] [or a magistrate of the police courts of the metropolis, or stipendiary
 magistrate, as the case may be] for that [etc. as in the order]; and thereupon
 having considered the matter of the said complaint, we [or I] adjudged the said
 [set out from Form K. the adjudication of payment, and the
 order for distress and for imprisonment in default of distress]: and whereas the
 time in and by the said order appointed for the payment of the said several sums
 of _____ and _____ hath elapsed, but the said
 hath not paid the same or any part thereof within fourteen days after the date fixed
 by the order for such payment, but therein hath made default: these are therefore
 to command you in her Majesty's name forthwith to make distress of the goods and
 chattels of the said A. B.; and if within the space of _____ days after the
 making of such distress the said last-mentioned sums, together with the reasonable
 charges of taking and keeping the said distress, shall not be paid, that then you do sell
 the said goods and chattels so by you distrained, and do pay the money arising from
 such sale over to the clerk of the justices of the peace for the division of
 in the said [county, or as the case may be], that he may pay and apply the same
 as by law directed, and may render the overplus, if any, on demand, to the said
 ; and if no such distress can be found, then that you certify the
 same unto me, to the end that such proceedings may be had therein as to the law doth
 appertain.

Given under our [or my] hands and seal, this _____ day of _____
 in the year of our Lord one thousand eight hundred and _____ at _____
 in the [county] aforesaid.

A. B.
 C. D.

(L. S.)

FORM (L).

Return of Proceedings under "Nuisances Removal Act, 1855," by the
 [name the local authority at length].

From 25th March, 1855, to 25th March, 1856.

Date of Notice.	By whom given.	Nature of Nuisance.	Proceedings taken.	Remarks:—With any special work done under the Acts, without any notice.
16 April.	The Inspector.	Foul drainage from house.	Owner put down good drain, on summons, without justices' order.	Several houses being in a like position, the highways surveyor laid down a sewer in the old watercourse, and each house was charged a proportionate sum for the same, of which the highest sum was 10s.
18 April.	Two neighbours.	Offensive cess-pool.	Abated by local authority.	Renewed once; but penalty recovered, and no subsequent renewal attempted.

Dated this 26th day of March, 1856. [To be signed by the chairman of
 the local authority.]

2. *Remedy
for, by
Removal, etc.*

The 21 & 22 Vict. c. 97, contains provisions for vesting in the Privy Council certain powers for the protection of the public health, which do not require to be noticed here.

18 & 19 Vict.
cc. 121 and 116.

By the 23 & 24 Vict. c. 77, entitled "An Act to Amend the Acts for the Removal of Nuisances and the Prevention of Diseases," [6th August, 1860,] after reciting that the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," concerning the local authority for the execution of the said Acts are defective, and it is expedient that the said Acts should be amended as hereinafter mentioned: it is enacted as follows:

Nuisances Removal.

Sections 3, 6, 7,
and 9 of 18 & 19
Vict. c. 121, re-
pealed.

Sect. 1. Section three, section six, section seven, and section nine of the said "Nuisances Removal Act for England, 1855," shall be repealed: Provided always, that such repeal as aforesaid shall not extend to any charges or expenses already incurred, but the same may be defrayed and recovered, and all proceedings commenced or taken under the said Act, and not yet completed, may be proceeded with, and all contracts under the said Act shall continue and be as effectual, as if this Act had not been passed.

Local authority
to execute the
"Nuisances Re-
moval Act."

Sect. 2. The following bodies shall respectively be the local authority to execute the said "Nuisances Removal Act" in the districts hereunder stated in England:

In any place within which the "Public Health Act" is or shall be in force, the local board of health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the City of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being, and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in execution of the local improvement Acts in force respectively in the said city and borough:

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners:

In any place within which there is no such local board of health, council, body of trustees, or commissioners, if there be a board of guardians of the poor for such place, or for any parish or union within which such place is situate, such board of guardians, and, if there be no such board of guardians, the overseers of the poor for such place, or for the parish of which such place forms part.

Sect. 3 is repealed by the 29 & 30 Vict. c. 90, s. 17, *post*, 1061.

How expenses of
local authority to
be defrayed.

Sect. 4. All charges and expenses incurred by the local authority in executing the said "Nuisances Removal Act," and not recovered as therein provided, shall be defrayed as follows; to wit,

Out of general district rates where the local authority is a local board of health:

Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses by the council:

Provided always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable:

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act:

Where a board of guardians for a union is such local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor:

Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority:

Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any such single place, or the overseers of any such place, or "the nuisances removal committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof:

Where the board of guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, such board shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof:

So much of any such charge and expenses as may be apportioned to part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor.

Sect. 5. Provided, that the board of guardians for a union may appoint a committee or committees of their own body, under section five of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority; and every committee so appointed shall have the full power of executing the said Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment; and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which such committee is appointed; and where a committee is so appointed for any such place or places, the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee: Provided that where any one such committee is appointed for all the places for which the board is the local authority, its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if such committee had not been appointed.

Board of guardians may appoint committees for particular parishes.

Sect. 6. Provided also, that as regards the metropolis, the vestries and district boards under the 18 & 19 Vict. c. 120, within their respective parishes and districts, shall continue and be the local authorities for the execution of the said Nuisances Removal Act, and their charges and expenses shall be defrayed as if this Act had not been passed.

Saving for the vestries and district boards of the metropolis.

2. *Remedy
for, by
Removal, etc.*

Wells, etc., be-
longing to any
place vested in
local authority,
etc.

Sect. 7. All wells, fountains, and pumps, provided under section fifty of "The Public Health Act, 1848" (a), or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation other than officers of such place, shall be vested in the local authority under this Act for such place, who shall from time to time cause to be kept in good repair and condition and free from pollution all wells, fountains, and pumps vested in them under this Act, and may also keep in good repair and condition and free from pollution other wells, fountains, and pumps dedicated to or open to the use of the inhabitants of such place.

By the 29 & 30 Vict. c. 90, s. 13, *ante*, 530, all property in wells, fountains, and pumps, and powers in relation thereto, vested in the nuisance authority by this section, are to vest in the sewer authority where the sewer authority supplies water to its district.

Penalty for
fouling water.

Sect. 8. If any person do any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain, or pump is polluted or fouled, he shall, upon summary conviction of such offence before two justices, forfeit a sum not exceeding £5 for such offence, and a further sum not exceeding 20s. for every day during which such offence is continued after written notice from the local authority in relation thereto; but nothing herein contained shall extend to any offence provided against by section twenty-three of the said "Nuisances Removal Act" (b).

Appointment of
inspectors of
nuisances.

Sect. 9. Local authorities under this Act may, for the purposes of the Act, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors.

Diseases Prevention.

Sections 2 and 3
of 18 & 19 Vict.
c. 116, repealed.

Sect. 10. Sections two and three of "The Diseases Prevention Act, 1855," and every other enactment constituting a local authority for the execution of the same Act, or providing for the expenses of the execution thereof, except those contained in the 18 & 19 Vict. c. 120, the Metropolis Local Management Act, shall be repealed.

Guardians and
overseers of the
poor to be the
local authorities
for executing
Diseases Preven-
tion Act.

Sect. 11. The board of guardians for every union, or parish not within an union, in England shall be the local authority for executing the said Diseases Prevention Act in every place within their respective unions and parishes, and in every parish and place in England not within a union, and for which there is no board of guardians, the overseers of the poor shall be the local authority to execute the same Act; and the expenses incurred in the execution of such Act by the board of guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the board of guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place; provided that every such board of guardians shall, for the execution of the said Act for the Prevention of Diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner, as hereinbefore provided where such a board is the local authority for the execution of the said Nuisances Removal Act; provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed; provided, moreover, that in respect of any place where, under this Act, the local authority for executing the Nuisances Removal Act is any other body

(a) *Ante*, 451.

(b) *Ante*, 1045.

than the board of guardians or the overseers of the poor, the privy council, if it see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act; provided also, that as regards the metropolis the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "Diseases Prevention Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed.

*2. Remedy
for, by
Removal, etc.*

Sect. 12. It shall be lawful for the local authority for executing the said "Diseases Prevention Act" to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to convey such sick and diseased persons as may be residing within such locality to any hospital or other place of destination, and the expense thereof shall be deemed to be an expense incurred in executing the said Act.

Local authorities may provide carriages for conveyance of infected persons.

Sect. 13. Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint, and act in relation thereto as in cases where complaint is made by a local authority under section twelve of the said Nuisances Removal Act, and as if the person making the complaint were such local authority: Provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under section eleven of the said Act: Provided also, that the costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices: any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof and subject to the like appeal as any order made under section twelve of the said Nuisances Removal Act, and the justices making such order may thereby authorize any constable or other person or persons to do all acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the said Act, and to charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

Justices, on the application of householders, may order the removal of nuisances.

Sect. 14. The guardians of any union, or parish not within an union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund.

Guardians may procure sanitary reports and pay for the same.

Sect. 15. The several words used in this Act shall be construed in the same manner as is declared with reference to the same words in the

Interpretation of terms.

2. *Remedy
for, by
Removal, etc.*

above-cited Act, termed "The Nuisances Removal Act for England, 1855 (a)," and all the provisions therein, and in "The Diseases Prevention Act, 1855," contained, shall respectively be applicable to this Act, except so far as they shall be hereby repealed, or be inconsistent with anything herein provided.

Sect. 16 is repealed by the 29 & 30 Vict. c. 41, s. 1, *post*, 1061. See sect. 2 of that Act, *post*, 1061.

By the 26 & 27 Vict. c. 117, entitled "An Act to amend the Nuisances Removal Act for England, 1855, with respect to the Seizure of diseased and unwholesome Meat," [28th July, 1863,] after reciting that the provisions of "The Nuisances Removal Act for England, 1855," with regard to the inspection and seizure of diseased and unwholesome meat are defective; and it is therefore expedient that the same should be repealed, and that other and more effectual provisions in that behalf should be substituted therefor, it is enacted as follows:

Sect. 26 of
recited Act re-
pealed.

Power to medical
officer of health
or inspector of
nuisances to in-
spect any ani-
mal, etc.

Sect. 1. From and after the passing of this Act, the twenty-sixth section of the said Act is repealed.

Sect. 2. The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes, or was not intended for the food of man, resting with the party charged; and in case any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take and carry away the same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice; and if it shall appear to the justice that any such animal, or any of the said articles, is diseased, or unsound or unwholesome, or unfit for the food of man, he shall order the same to be destroyed or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food; and the person to whom such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same is found, shall, upon conviction, be liable to a penalty not exceeding £20 for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found, or, at the discretion of the justice, without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months.

Penalty for ob-
structing medical
officer of health,
etc.

Sect. 3. In case any person shall in any manner prevent such medical officer of health or inspector of nuisances from entering any slaughter house, shop, building, market, or other place where such animal, carcase, meat, poultry, or fish is kept for the purpose of sale, or of preparation for sale, or shall in any manner obstruct or impede him, or his servant or assistant, when duly engaged in carrying the provisions of this Act into execution, such person shall be liable to a penalty not exceeding £5

This and recited
Act to be as one
Act.

Sect. 4. This Act and "The Nuisances Removal Act for England 1855," shall be read and construed together as one Act.

Sect. 5. This Act may be cited for all purposes as "The Nuisances Removal Act for England (Amendment) Act, 1863."

2. *Remedy for, by Removal, etc.*

By the 29 & 30 Vict. c. 41, entitled "An Act to amend the Nuisances Removal and Diseases Prevention Act, 1860," [28th June, 1866.] after reciting that it is expedient that the provisions of the 23 & 24 Vict. c. 77, as to the power of justices of the peace to act in cases other than appeals arising under "The Nuisances Removal Act for England, 1855," should be repealed, and that the said 23 & 24 Vict. c. 77 should, be amended as hereinafter mentioned, it is enacted as follows:

Short title.

Sect. 1. The sixteenth section of the Act of the 23 & 24 Vict. c. 77, shall be and is hereby repealed.

Sect. 16 of 23 & 24 Vict. c. 77, repealed.

Sect. 2. No justice of the peace shall be deemed incapable of acting in cases under the "Nuisances Removal Act," or the 23 & 24 Vict. c. 77, by reason of his being a member of any body thereby declared to be the authority to execute the said Act, or by reason of his being a contributor or liable to contribute to any rate or fund out of which it is thereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed.

No justice to be incapable of acting, because member of body authorized to execute Act or liable to contribute.

Sect. 3. This Act may be cited as "The Nuisances Removal Act (No. 1), 1866."

Short title.

By the 29 & 30 Vict. c. 90, part 2 (a), sect. 14, the expression "Nuisances Removal Acts" shall mean the 18 & 19 Vict. c. 121, and the 23 & 24 Vict. c. 77, as amended by this part of this Act; and this part of this Act shall be construed as one with the said Acts, and all expenses incurred by a nuisance authority in carrying into effect any of the provisions of this part of this Act shall be deemed to be expenses incurred by it in carrying into effect the "Nuisances Removal Acts."

Definition of "Nuisances Removal Acts."

Sect. 15. "Nuisance authority" shall mean any authority empowered to execute the "Nuisances Removal Acts."

Definition of "nuisance authority."

Sect. 16. In any place within the jurisdiction of a nuisance authority the chief officer of police within that place, by and under the directions of one of her Majesty's principal secretaries of state, on its being proved to his satisfaction that the nuisance authority has made default in doing its duty, may institute any proceeding which the nuisance authority of such place might institute with respect to the removal of nuisances: Provided always, that no officer of police shall be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice of the peace, for the purpose of carrying into effect this Act.

Power of police with respect to nuisances.

Sect. 17. The third section of the 23 & 24 Vict. c. 77, shall be repealed, and all powers vested in any highway board or "nuisance removal committee" under the "Nuisances Removal Acts" shall determine, and all property belonging to them for the purposes of the said "Nuisances Removal Acts" shall, subject to any debts or liabilities affecting the same, be transferred to or vested in the nuisance authority under the said Acts: Provided always, that this section shall not extend to any vestry or district board under the 18 & 19 Vict. c. 120, or to any committee appointed by such vestry or district board for the purpose of carrying into effect the "Nuisances Removal Acts" or any of them.

Sect. 3 of 23 & 24 Vict. c. 77 repealed.

Sect. 18. A requisition in writing under the hands of any ten inhabitants of a place shall for the purposes of the twenty-seventh section of

Requisition of ten inhabitants equivalent to certifi-

2. *Remedy
for, by
Removal, etc.*

cate of medical
officer.

Addition to defi-
nition of "nuis-
ance."

"The Nuisances Removal Act for England, 1855" (a), be deemed to be equivalent to the certificate of the medical officer or medical practitioners therein mentioned, and the said section shall be enforced accordingly.

Sect. 19. The word "nuisances" under "Nuisances Removal Acts" shall include,—

1. Any house or part of a house so overcrowded as to be dangerous or prejudicial to the health of the inmates :
2. Any factory, workshop, or workplace not already under the operation of any general Act for the regulation of factories or bakehouses, not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to the health of those employed therein :
3. Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used in such fireplace or furnace, and is used within the district of a nuisance authority for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever :

Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance :

Provided, first, that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act :

Secondly, that where a person is summoned before the justices in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the justices may hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if they are satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

Duties of nuisance authorities as to inspection of nuisances.

Sect. 20. It shall be the duty of the nuisance authority to make from time to time, either by itself or its officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of the Nuisance Removal Acts, and to enforce the provisions of the said Acts in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fireplaces and furnaces to consume their own smoke ; and any justice upon complaint upon oath may make an order to admit the nuisance authority or their officers for these purposes, as well as to ground proceedings under the eleventh section (b) of "The Nuisances Removal Act, 1855."

As to proceedings of nuisance authority under

Sect. 21. The nuisance authority or chief officer of police shall, previous to taking proceedings before a justice under the twelfth section (c)

(a) *Ante*, 1046.
(b) *Ante*, 1038.

(c) See this section and the cases bearing upon it, *ante*, 1039.

of "The Nuisances Removal Act, 1855," serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, on the owner or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works and to do all such things as may be necessary within a time to be specified in the notice: Provided,

2. *Remedy for, by Removal, etc.*

sect. 12 of 18 & 19 Vict. c. 121.

First, that where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner;

Secondly, that where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, then the nuisance authority may itself abate the same without further order, and the cost of so doing shall be part of the costs of executing the Nuisances Removal Acts, and borne accordingly.

Sect. 22. If the nuisance authority shall be of opinion, upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious or contagious disease, it shall be the duty of the nuisance authority to give notice in writing requiring the owner or occupier of such house or part thereof to cleanse and disinfect the same as the case may require; and if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty of not less than 1s. and not exceeding 10s. for every day during which he continues to make default; and the nuisance authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner; when the owner or occupier of any such house or part thereof as is referred to in this section is from poverty or otherwise unable, in the opinion of the nuisance authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent, at its own expense, cleanse and disinfect such house or part thereof and any articles therein likely to retain infection.

Power to cause premises to be cleansed or otherwise disinfected.

Sect. 23. The nuisance authority in each district may provide a proper place, with all necessary apparatus and attendance, for the disinfection of woollen articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge.

Power to provide means of disinfection.

Sect. 24. It shall be lawful at all times for the nuisance authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein to a hospital or place for the reception of the sick or to his own home.

Nuisance authorities may provide carriages for conveyance of infected persons.

Sect. 25. If any person suffering from any dangerous infectious disorder shall enter any public conveyance without previously notifying to the owner or driver thereof that he is so suffering, he shall on conviction thereof before any justice be liable to a penalty not exceeding £5, and shall also be ordered by such justice to pay to such owner and driver all the losses and expenses they may suffer in carrying into effect the provisions of this Act; and no owner or driver of any public conveyance shall be required to convey any person so suffering until they shall have been first paid a sum sufficient to cover all such losses and expenses.

Penalty on person suffering from infectious disorder entering public conveyance without notifying to driver that he is so suffering.

Sect. 26. Where a hospital or place for the reception of the sick is provided within the district of a nuisance authority, any justice may,

Removal of persons sick of in-

2. *Remedy for, by Removal, etc.*

fectious disorders, and without proper lodging, in any district.

Places for the reception of dead bodies may be provided at the public expense.

Places or reception of dead bodies during time required for *post-mortem* examination may be provided.

Power to remove to hospital sick persons brought by ships.

Provision as to district of nuisance authority extending to places where ships are lying.

Power of entry to nuisance authority or their officer under sect. 11 of 18 & 19 Vict. c. 121.

with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the nuisance authority, of any person suffering from any dangerous, contagious, or infectious disorder, being without proper lodging or accommodation, or lodged in a room occupied by more than one family, or being on board any ship or vessel.

Sect. 27. Any nuisance authority may provide a proper place for the reception of dead bodies, and where any such place has been provided and any dead body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed to such proper place of reception at the cost of the nuisance authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Sect. 28. Any nuisance authority may provide a proper place (otherwise than at a workhouse or at a mortuary house as lastly hereinbefore provided for) for the reception of dead bodies for and during the time required to conduct any *post-mortem* examination ordered by the coroner of the district or other constituted authority, and may make such regulations as they may deem fit for the maintenance, support, and management of such place; and where any such place has been provided, any coroner or other constituted authority may order the removal of the body for carrying out such *post-mortem* examination and the re-removal of such body, such costs of removal and re-removal to be paid in the same manner and out of the same fund as the cost and fees for *post-mortem* examinations when ordered by the coroner.

Sect. 29. Any nuisance authority may, with the sanction of the Privy Council, signified in manner provided by "The Public Health Act, 1858," lay down rules for the removal to any hospital to which such authority is entitled to remove patients, and for keeping in such hospital so long as may be necessary any persons brought within their district by any ship or boat who are infected with a dangerous and infectious disorder, and they may by such rules impose any penalty not exceeding £5 on any person committing any offence against the same.

Sect. 30. For the purposes of this Act any ship, vessel, or boat that is in a place not within the district of a nuisance authority shall be deemed to be within the district of such nuisance authority as may be prescribed by the Privy Council, and until a nuisance authority has been prescribed then of the nuisance authority whose district nearest adjoins the place where such ship, vessel, or boat is lying, the distance being measured in a straight line, but nothing in this Act contained shall enable any nuisance authority to interfere with any ship, vessel, or boat that is not in British waters.

Sect. 31. The power of entry given to the authorities by the eleventh section of the "Nuisances Removal Act, 1855" (a), may be exercised at any hour when the business in respect of which the nuisance arises is in progress or is usually carried on.

And any justice's order once issued under the said section shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

2. *Remedy for, by Removal, etc.*

Sect. 32. Any ship or vessel lying in any river, harbour, or other water shall be subject to the jurisdiction of the nuisance authority of the district within which such river, harbour, or other water is, and be within the provisions of the Nuisances Removal Acts, in the same manner as if it were a house within such jurisdiction, and the master or other officer in charge of such ship shall be deemed for the purposes of the Nuisances Removal Acts to be the occupier of such ship or vessel; but this section shall not apply to any ship or vessel belonging to her Majesty or to any foreign government.

Provision as to ships within the jurisdiction of nuisance authority.

Sect. 33. Where the guardians are the nuisance authority for part of any parish only, and shall require to expend money on account of such part in execution of the provisions of the said Acts, the overseers of the parish shall, upon receipt of an order from the said guardians, raise the requisite amount from the persons liable to be assessed to the poor rate therein by a rate to be made in like manner as a poor rate, and shall have all the same powers of making and recovering the same, and of paying the expense of collecting the rate when made, and shall account to the auditor of the district for receipt and disbursement of the same, in like manner, and with the same consequences, as in the case of the poor rate made by them.

Provision for raising money in divided parishes.

Sect. 34. That it shall be lawful for the nuisance authority, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said Nuisances Removal Acts or this Act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorized by the Nuisance Removal Acts, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the nuisance authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier; provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord or tenant.

Nuisance authority may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent

PART III.

Miscellaneous.

Sect. 35. On application to one of her Majesty's principal secretaries of state by the nuisance authority of the city of London, or any district or parish included within the Act for the better local government of the metropolis, or of any municipal borough, or of any place under the

In cities, boroughs, or towns secretary of state, on application of nuisance

2. *Remedy for, by Removal, etc.*

authority, may empower them to make regulations as to lodging houses.

Local Government Act, 1858, or any Local Improvement Act, or of any city or town containing, according to the census for the time being in force, a population of not less than five thousand inhabitants, the secretary of state may, as he may think fit, by notice to be published in the *London Gazette*, declare the following enactment to be in force in the district of such nuisance authority, and from and after the publication of such notice the nuisance authority shall be empowered to make regulations for the following matters; that is to say,

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family :
2. For the registration of houses thus let or occupied in lodgings :
3. For the inspection of such houses, and the keeping the same in a cleanly and wholesome state :
4. For enforcing therein the provision of privy accommodation and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases :
5. For the cleansing and lime-whiting at stated times of such premises :

The nuisance authority may provide for the enforcement of the above regulations by penalties not exceeding 40s. for any one offence, with an additional penalty not exceeding 20s. for every day during which a default in obeying such regulations may continue; but such regulations shall not be of any validity unless and until they shall have been confirmed by the secretary of state.

But this section shall not apply to common lodging houses within the provisions of "The Common Lodging Houses Act, 1851," or any Act amending the same.

Cases in which two convictions have occurred within three months.

Sect. 36. Where two convictions against the provisions of any Act relating to the overcrowding of a house, or the occupation of a cellar as a separate dwelling place, shall have taken place within the period of three months, whether the persons so convicted were or were not the same, it shall be lawful for any two justices to direct the closing of such premises for such time as they may deem necessary, and, in the case of cellars occupied as aforesaid, to empower the nuisance authority to permanently close the same, in such manner as they may deem fit, at their own cost.

Sect. 37 confers on the sewer authority or in the metropolis on the nuisance authority the power of providing hospitals. See the section, tit. "*Local Government*," ante, 553.

Penalty on any person, with infectious disorder, exposing himself, or on any person in charge of such sufferer causing such exposure.

Sect. 38. Any person suffering from any dangerous infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or driver, conveyed any such sufferer, and any person who without previous disinfection gives, lends, sells, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders, shall, on conviction of such offence before any justice, be liable to a penalty not exceeding £5: Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any such bedding, clothing, rags, or other things for the purpose of having the same disinfected.

Sect. 39. If any person knowingly lets any house, room, or part of a house in which any person suffering from any dangerous infectious disorder has been to any other person without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner as testified by a certificate given by him, such person shall be liable to a penalty not exceeding £20. For the purposes of this section the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into such inn.

2. *Remedy for, by Removal, etc.*

Penalty on persons letting houses in which infected persons have been lodging.

Sect. 40. Where in any place two or more boards of guardians or local authorities have jurisdiction, the privy council may, by any order made under the "Diseases Prevention Act, 1855," authorize or require such boards to act together for the purposes of that Act, and may prescribe the mode of such joint action and of defraying the costs thereof.

Guardians, etc., of the poor to be the local authorities for executing Diseases Prevention Act.

Sect. 41. In any proceedings under the "Common Lodging Houses Act, 1851" (a), if the inmates of any house or part of a house allege that they are members of the same family, the burden of proving such allegation shall lie on the persons making it.

Evidence of family in case of overcrowded houses.

Sect. 42. The sixty-seventh section of "the Public Health Act, 1848" (b), relating to cellar dwellings, shall apply to every place in England and Ireland where such dwellings are not regulated by any other Act of Parliament, and in applying that section to places where it is not in force at the time of the passing of this Act the expression "this Act" shall be construed to mean the "Sanitary Act, 1866," and not the said "Public Health Act, 1848." In construing the said sixty-seventh section as applied by this Act, nuisance authority shall be substituted for the local board.

Extension to the whole of England and Ireland of sect. 67 of 11 & 12 Vict. c. 63.

Sects. 43 and 44 relate to local boards of health, and will be found *ante*, 498, 474.

Sect. 45. If any person wilfully damages any works or property belonging to any local board, sewer authority, or nuisance authority, he shall be liable to a penalty not exceeding £5.

Penalty for wilful damage of works.

Sect. 46. The following bodies, that is to say, local boards, sewer authorities, and nuisance authorities, if not already incorporated, shall respectively be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on such bodies respectively in their several characters of local boards, sewer authorities, or nuisance authorities.

Incorporation of sanitary authorities.

Sect. 47 relates to local boards of health, and will be found *ante*, 476.

Sect. 48. Any local board, sewer authority, or nuisance authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such board or authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the Nuisance Removal Acts or this Act.

Appearance of local authorities in legal proceedings.

Sects. 49 and 50 relate to local boards and sewer authorities only, and will be found *ante*, 534.

Sect. 51. All penalties imposed by the 6 Geo. 4, c. 78, intituled "An Act to Repeal the several Laws relating to Quarantine, and to make other Provisions in lieu thereof," may be reduced by the justices or Court having jurisdiction in respect of such penalties to such sum as the justices or Court think just.

Power to reduce penalties imposed by 6 Geo. 4, c. 78.

3. *Remedy for, by Indictment, etc.*

Description of vessels within provisions of 6 Geo. 4, c. 78.

Sect. 52. Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the 6 Geo. 4, c. 78, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom; and the lords and others of her Majesty's most honourable privy council, or any three or more of them (the lord president of the council or one of her Majesty's principal secretaries of state being one), may, by order or orders to be by them from time to time made, make such rules, orders, and regulations as to them shall seem fit, and every such order shall be certified under the hand of the clerk in ordinary of her Majesty's privy council, and shall be published in the *London Gazette*, and such publication shall be conclusive evidence of such order to all intents and purposes; and such orders shall be binding and be carried into effect as soon as the same shall have been so published, or at such other time as shall be fixed by such orders, with a view to the treatment of persons affected with cholera and epidemic, endemic, and contagious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and to declare and determine by what nuisance authority or authorities such orders, rules, and regulations shall be enforced and executed; and any expenses incurred by such nuisance authority or authorities shall be deemed to be expenses incurred by it or them in carrying into effect the Nuisances Removal Acts.

Periodical removal of manure in mews, etc.

Sect. 53. Where notice has been given by the nuisance authority, or their officer or officers, for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the nuisance authority, or their officer or officers, shall direct, he or they shall be liable, without further notice, to a penalty of 20s. per day for every day during which such manure or other refuse matter shall be permitted to accumulate, such penalty to be recovered in a summary manner: Provided always, that this section shall not apply to any place where the board of guardians or overseers of the poor are the nuisance authority.

Recovery of penalties.

Sect. 54. Penalties under this Act, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by the 11 & 12 Vict. c. 43, or any Act amending the same.

Powers of Act cumulative.

Sect. 55. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament, law, or custom, and such authority may exercise such other powers in the same manner as if this Act had not passed.

III. Remedy for, by Indictment, Information, or Presentment, etc.

Remedy by indictment, etc.

The usual remedy for a public nuisance is by indictment. It may, however, be by presentment, or sometimes by information. (See tits. "*Presentment*," *post*, and "*Information*," *ante*, 53.)

As to writ of *ad quod damnum*, see "*Highways in General*," Vol. II.

The torn or leet may prevent and redress all immediate and public nuisances. (2 *Roll*. 61; *Pineux v. Hovendon*, *Cro. Eliz.* 664; 2 *Hawk.* c. 10, s. 58.)

4. Punishment for.

If the party who has been indicted for a nuisance continue the same, he may be again indicted for such continuance. So, though for a private nuisance two actions for the erection cannot be had, yet a second action for the continuance thereof may be sustained. (*Johnson v. Long*, 1 *Ld. Raym.* 370; 1 *Salk.* 10, *S. C.*)

For continuance.

An indictment for a nuisance ought to state the place where the nuisance was committed, and describe where the place is situated. (*R. v. Record*, 2 *Show.* 216.) Laying the nuisance to be near the highway, and also near the several dwelling-houses, etc., is sufficient. (*R. v. Pappineau*, 2 *Str.* 686. And see further, tit. "Highways," *Vol. II.*)

Form of indictment.

Where a thing is not a nuisance actually, but only becomes so by particular circumstances, the indictment ought to show the special matter, and not conclude generally to the common nuisance, etc. (*Com. Palm.* 368, 374.)

The indictment must not conclude to the damage only of an individual. (*Ante*, 1027, 1028.)

The defendant shall not be allowed to make any objections against the indictment until he hath pleaded to it. (*Dalt.* c. 66.)

In some cases a prosecutor in an indictment for a nuisance may be compelled to give a particular of the acts of nuisance intended to be relied on. And in an indictment for a nuisance against the members of a gas company for throwing poisonous matter into the Thames, and sinking barges, and making erections in the river, the Court compelled the prosecutor to give such a particular. (*R. v. Ourwood*, 1 *Harr. & W.* 310; 5 *N. & M.* 369; 3 *Ad. & Ell.* 815, *S. C.*; and see *R. v. Flower*, 7 *Dowl.* 665.)

Particulars of nuisance.

Upon the trial of an indictment for a nuisance at common law in carrying on a trade, a summary conviction under the 16 & 17 *Vict.* c. 128, s. 1, for carrying on the same trade so as to occasion noxious effluvia "without using the best practicable means of preventing or counteracting the smoke or other annoyance" is not admissible in evidence. (*Reg. v. Fairie*, 8 *El. & Bl.* 486.)

The remedy by action is not within the scope of this work.

IV. Punishment for.

The punishment for a nuisance is fine or imprisonment, or both; and it is said, that one convicted of a nuisance done to a public highway may be commanded by the judgment to remove the nuisance if it be shown to be continuing; and this may be so, though the nuisance be not to a highway. (See *R. v. Stead*, 8 *T. R.* 143; *R. v. Yorkshire JJ.*, 7 *T. R.* 467; *R. v. Incedon*, 13 *East*, 164.) And the Court never admits a person convicted of a nuisance to a small fine, until proof is made of the nuisance being removed. (*Dalt.* c. 66.)

Punishment by fine and imprisonment, and to remove the nuisance if it be continuing.

The 12 & 13 *Vict.* c. 45, s. 18, for removing orders of quarter sessions for the purpose of enforcing them by attachment does not apply to an order to abate a nuisance of which a defendant has been found guilty. (*Reg. v. Bateman*, 27 *L. J.*, *M. C.* 95.)

In a prosecution for a nuisance, if it be referred to the award of a bar-rister, who awards in favour of the prosecutor: if the nuisance is continued, the prosecutor may move for judgment, or apply for an attachment; but, before judgment is moved for, the defendant is entitled to see

5. Forms.

the affidavits on which the motion is grounded. (*Reg. v. Gower*, 8 Dowl. P. C. 102; 3 Jur. 1076, Q. B.)

Punishment by
cucking stool.

It is said that a common scold is punishable (after conviction upon indictment); by being placed in a certain engine of correction called the trebucket or cucking stool. (1 Hawk. c. 75, s. 14.) (a)

Effect of pardon.

An act of general pardon only discharges the fine, but not the abatement of the nuisance. (*R. v. Wilcox*, 2 Salk. 458.)

V. Forms (b).

(1.) General
form of indictment for a
nuisance (c).

— } The jurors for our lady the Queen upon their oath present, that
to wit. } C. D., on the day of , in the
year of the reign of our lady the now Queen Victoria, and on divers other days
and times, as well before as afterwards, and before the day of taking this in-
quisition, at the parish of [here set forth the nuisance]: and
the same (c) nuisance so as aforesaid done, doth yet continue and suffer to
remain, to the great damage and common nuisance of all the liege subjects of
our said lady the Queen, to the evil example of all others, and against the peace
of our said lady the Queen, her crown and dignity.

(2.) Indictment
for beating fea-
thers on house,
near a highway
and dwelling-
houses.

— } The jurors for our lady the Queen upon their oath present, that
to wit. } C. D., on the day of , in the
year of the reign of our lady the now Queen Victoria, and on divers other days
and times between that day and the day of taking this inquisition, in the parish
of , in a certain dwelling-house and premises, and upon and over
the roof thereof, near to the dwelling-houses, habitations, and residences of divers
subjects of our said lady the Queen, therein dwelling and residing, and also near
to divers public streets and common highways there, unlawfully and injuriously
did set up, exercise, and carry on, the trade and business of a feather beater, and
on the day and year first aforesaid, and on the several days and times aforesaid,
there unlawfully and injuriously did beat and strike, and did cause and procure
to be beaten and stricken, divers large quantities of feathers, feather beds, bol-
sters, and bags of feathers, and other goods, with divers long and heavy poles and
sticks, and other instruments, and did thereby then and there unlawfully and
injuriously make, and cause and procure to be made, divers loud, hollow, and
offensive sounds and noises, and did also, by the means aforesaid, unlawfully
and injuriously cause divers large quantities of dust, feathers, down, and flue
to be dispersed and scattered about, out of and from the said first-mentioned
dwelling-house and premises, and from the roof thereof, into and over and

(a) Cuck, or guck, in the Saxon tongue (according to Lord Coke), signifieth to scold or brawl, taken from the bird cuckoo or guckhaw, and *ing* in that language signifieth water; because a scolding woman was, for her punishment, soured in the water. (3 Inst. 219.) The common people in the northern parts of England, amongst whom the greatest remains of the ancient Saxon are to be found, pronounce it *ducking-stool*; which, perhaps, may have sprung from the Belgic or Teutonic *ducken*, to dive under water; from whence also, probably, we denominate our *duck*, the

water-fowl; or rather, it is more agreeable to the analogy and progression of languages to assert, that the substantive *duck* is the original, and the verb made from thence; as much as to say, that to *duck* is to do as that fowl does.

(b) See also the forms contained in the schedules to 18 & 19 Vict. c. 121, ante, 1050.

(c) See a variety of forms of indictments for nuisances, 3 Chit. C. L. and Talf. Dick. Sessions.

(d) If the nuisance do not continue, this averment had better be omitted.

about divers of the said dwelling-houses of the said subjects of our said lady the Queen, being near to the said first-mentioned dwelling-house and premises; by reason whereof the said subjects of our said lady the Queen, so dwelling, residing, and living in the said dwelling-houses, habitations, and residences, near to the said first-mentioned dwelling-house and premises, on the several days and times aforesaid, were and still are greatly annoyed, disturbed, and incommoded, in the use, occupation, and enjoyment of their said dwelling-houses, habitations, and residences, and greatly interrupted in the exercise and pursuit of their respective lawful trades, businesses, and transactions, and deprived of their natural rest and sleep, and rendered and made in other respects very uncomfortable; and thereby also the subjects of our said lady the Queen, in, through, and along the common public streets and highways aforesaid, passing, repassing, and travelling, were and are greatly annoyed and disturbed: to the great damage and common nuisance of all the liege subjects of our said lady the Queen, not only near to the said first-mentioned dwelling-house and premises, but also in and through the said streets and highways there then going, passing, and returning, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity. And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D., on the day and year aforesaid, and on the other days and times aforesaid, in the parish aforesaid, near to the dwelling-houses, habitations, and residences, of divers subjects of our said lady the Queen, unlawfully and injuriously did make, and cause and procure to be made, divers great loud and hollow sounds and noises, and also divers violent shakings and percussions of divers of the said dwelling-houses of the said subjects, by then and there, to wit, on the several days and times aforesaid, beating and striking, and causing to be beaten and struck, divers feathers, feather beds, bolsters, and bags of feathers, with divers long and heavy poles, and other instruments; by reason whereof the subjects of our said lady the Queen residing and living near to the said last-mentioned place, where the said last-mentioned sounds, noises, shakings, and percussions were so made as aforesaid, were and still are greatly annoyed and disturbed in the occupation and enjoyment of their said dwelling-houses, habitations, and residences; to the great damage and common nuisance of all the liege subjects of our said lady the Queen, near the said last-mentioned place inhabiting, residing, and being, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts, varying the statement of the offence.]

5. Forms.

Second count.

— } The jurors for our lady the Queen upon their oath present, that
to wit. } C. D., on the day of , in the
year of the reign of our sovereign lady the now Queen Victoria, and on divers
days and times between that day and the taking of this inquisition, in the parish
of , in a certain workshop near the dwelling-houses of divers subjects
of our lady the now Queen, and also divers public Queen's highways, unlawfully
and injuriously did set up, exercise, and carry on the trade and business of a trunk-
maker, and on the day and year first aforesaid, and on the other days and times
aforesaid there, unlawfully and injuriously did make, and cause and procure to
be made, divers loud and annoying sounds and noises, by then and there hammering
and striking, and causing and procuring to be hammered and stricken, divers
trunks and boxes made of wood, iron, and copper, and divers pieces of wood, tin,
brass, copper, iron, and other metals, with divers large hammers and other instru-
ments made of wood and iron, by reason whereof the said subjects of our said
lady the Queen residing in the said dwelling-houses near to the said workshop,
on the several days and times aforesaid, were and still are greatly annoyed,
disturbed, and incommoded, in the use, occupation, and enjoyment of their said
dwelling-houses, and greatly interrupted in the exercise and pursuit of their
lawful businesses and transactions, and deprived of their natural sleep and
rest, and rendered and made in other respects uncomfortable; and thereby also
the subjects of our said lady the Queen, in, through, and along the common
highway aforesaid, passing, repassing, and travelling, were and are greatly
annoyed and disturbed; to the great damage and common nuisance of the liege
subjects of our said lady the Queen, and against the peace of our said lady the
Queen, her crown and dignity. [Add other counts, varying the statement of
the offence.]

(3.) Indictment
for a nuisance
from carrying
on the trade of
a trunk-maker.

5. Forms.

(4.) Indictment for erecting a furnace with a boiler, and using it for the boiling of tripe and offal of beasts.

_____ } The jurors for our lady the Queen upon their oath present, that
to wit. } C. D., on the _____ day of _____, in the _____
year of the reign of our lady the now Queen Victoria, in the parish of _____
_____, near the dwelling-houses of divers liege subjects of our said lady the Queen,
and also near divers streets and common highways did unlawfully and injuri-
ously erect and set up, and cause to be erected and set up, a certain furnace,
with a boiler to be used for boiling of tripe and other entrails and offal of beasts,
and that the said C. D., on the day and year aforesaid, and on divers other
days and times between that day and the day of the taking of this inquisition
at the parish aforesaid, divers large quantities of tripe and other entrails and
offal of beasts in the said boiler unlawfully and injuriously did boil, whereby
divers noisome and unwholesome smokes and smells did then, and on the said
other days and times, from thence there arise, so that the air there was greatly
corrupted and infected; to the great damage and common nuisance of all the
liege subjects of our said lady the Queen, not only near the same place inhabit-
ing and residing, but also in and through the said common streets and highways
going, returning, passing, and repassing, and against the peace of our said lady
the Queen, her crown and dignity. [Add other counts, varying the statement
of the offence.]

(5.) Indictment for using a shop in a market as a slaughter-house for killing sheep, etc.

_____ } The jurors for our lady the Queen upon their oath present, that C. D.,
to wit. } on the _____ day of _____, in the _____ year
of the reign of our lady the now Queen Victoria, and on divers other days and times
then before, in the parish of _____, in a certain shop of him the said C. D.,
situate and being in a common market place, called the Shambles, the said market
being a common passage for all the subjects of our said lady the Queen, with their
goods, chattels, and merchandises, to go, return, pass, and repass, at their free will
and pleasure, did unlawfully and injuriously kill and slay, and caused to be killed and
slain, divers, to wit, six sheep and two calves, and the excrement, blood, entrails, and
other filth coming from the said sheep and calves did then, and on the said other days
and times respectively, there cause and permit to lie and remain in the said shop for
a long time, to wit, for the space of six hours on each of those days, whereby
divers filthy and unwholesome smells and stench from the excrement, blood, en-
trails, and other filth coming from the sheep and calves aforesaid, then and on the
said other days and times respectively, there did arise, and the air there was
thereby greatly corrupted and infected; to the great damage and common nuisance,
not only of all the liege subjects of our said lady the Queen, near there inhabiting
and dwelling, but also of all other the liege subjects of our said lady the Queen, in,
by, and through the said common market and passage, going, returning, passing,
repassing, and labouring, and against the peace of our said lady the Queen, her
crown and dignity.

(6.) Indictment for keeping a furious dog unmuzzled near a highway.

_____ } The jurors for our lady the Queen upon their oath present, that C. D.,
to wit. } on the _____ day of _____, in the _____ year of the
reign of our lady the now Queen Victoria, and on divers other days and times between
that day and the day of taking this inquisition, in the parish of _____,
near unto the Queen's common highway, unlawfully did keep, and still doth keep, a
certain large dog of a fierce and furious nature, and the said dog, on the said days
and times, at the parish aforesaid, in the county aforesaid, near unto the said high-
way there, unlawfully did permit and suffer, and still doth permit and suffer to go
unmuzzled and at large, he the said C. D., at the said several days and times well
knowing the said dog to be of a very fierce and savage nature and disposition, and
prone to bite, worry, and injure all persons passing and repassing on the said high-
way; by reason whereof the liege subjects of our said lady the Queen, on the said
day and times, at the parish aforesaid, could not nor can they now go, return,
pass, and labour, in and through the said highway there, without great hazard and
danger of being bit, maimed, and torn by the said dog, and losing their lives; to
the great damage, terror, and common nuisance of the subjects of our said lady the
Queen, and against the peace of our said lady the Queen, her crown and dignity.

— } The jurors for our lady the Queen upon their oath present, that C. D.,
to wit. } on the day of , in the year of the
reign of our lady the now Queen Victoria, and on divers other days and times between
that day and the day of the taking of this inquisition, unlawfully did keep at large,
and still doth keep at large, a certain bull, of a fierce, furious, and unruly nature,
in a certain open field, called , in the parish of
(the same field on the days and times aforesaid and still being in the possession
and occupation of him the said C. D.), and that before and at the time of commit-
ting of the offence hereafter mentioned, there was and still is a certain common
public footway leading from the town of M., in the parish aforesaid, through and
along the said field towards and unto the town of B., in the same county, used for
all the liege subjects of our said lady the Queen, to pass and repass in, through, over,
and along the same at their free will and pleasure; and that the said bull, on the
day of , in the year of the reign
aforesaid, furiously ran at, to, and against one W. T. D., a liege subject of our
said lady the Queen, then passing in and along the said footway in the said field
about his lawful affairs and business, and then and there with its head and horns
furiously pushed at, cast down, and prostrated the said W. T. D. there, and greatly
hurt, bruised, gored, and wounded the said W. T. D. in and upon the left shoulder,
of him the said W. T. D., insomuch that his life was greatly despaired of: And
the jurors, etc., that the said bull afterwards, to wit, on the day of
, in the year of the reign aforesaid, and on the said other days
and times above mentioned, so being in the said field, and of such nature as aforesaid,
furiously ran at and after divers other liege subjects of our said lady the Queen, then
passing and repassing in and along the said footway in the said field there, about their
lawful affairs and business, and thereby greatly affrighted, terrified, and alarmed
the said last-mentioned subjects; and divers other liege subjects of our said lady the
Queen, on the days and times aforesaid, having occasion to pass and repass in and
along the said footway in the said field, could not nor can they now pass or repass
in and along the same, without great hazard and danger of being torn, gored, and
wounded by the said bull (he the said C. D., on the said days and times respectively
above mentioned, and long before and still well knowing the said bull to be of such
fierce, furious, and unruly nature, and accustomed to run at and after, and injure
persons passing and repassing over, through, and along the said field there); to the
great terror and common nuisance of all the liege subjects of our said lady the Queen,
passing and repassing in and along the said footway in the said field there, against
the peace of our said lady the Queen, her crown and dignity. [Add other counts,
varying the statement of the nuisance, and one or more leaving out the state-
ment of the bull having actually run at persons.]

5. Forms.

(7.) Indictment
for knowingly
keeping an un-
ruly bull, in a
field through
which there was
a public footway.

— } The jurors for our said lady the Queen upon their oath present, that,
to wit. } on the day of , in the year
of the reign of our lady the now Queen Victoria, E. R., an infant of tender
age, to wit, of the age of four years, was infected, ill, and sick of and with a
certain contagious, infectious, and dangerous disease and sickness, called the
smallpox: and that M. B., the wife of C. B., having the care and nurture of
the said E. R., well knowing the premises aforesaid, afterwards and whilst the
said E. R. was so infected, ill, and sick as aforesaid, to wit, on the day and
year aforesaid, unlawfully, and injuriously did take and carry the said E. R.
into and along a certain open public street and passage called Market Street,
situate in the parish of St. John in the town of N., in the county of N. afore-
said, used for all the liege subjects of our said lady the Queen, on foot to go,
return, and pass in, along, and through, in which said public street and passage
there were divers liege subjects of our said lady the Queen, and near unto and
by divers dwelling-houses, habitations, and residences of divers liege subjects of
our said lady the Queen, then and there dwelling, inhabiting, and residing, and
unto and into a certain common highway situate and being in, etc., aforesaid,
used for all the liege subjects of our said lady the Queen, on foot, and with
horses, coaches, carts, and carriages, to go, return, pass, ride, and labour, in,
along, and through; and in and along which said common highway there were
liege subjects of our said lady the Queen were then going, returning, passing,
riding, and labouring, and amidst and among divers liege subjects of our said
lady the Queen, who then and there, to wit, in the same common highway, in the
parish and county aforesaid, had met and assembled together; and that the

(8.) Indictment
for exposing a
child infected
with the small-
pox, in public
streets.

5. *Forms.*

said M. B., afterwards, and whilst the said E. R. was so infected, ill, and sick as aforesaid, to wit, on etc., and on divers other days and times between that day and the day of , in the same year, wrongfully and injuriously did take and carry the said E. R. into and along the aforesaid open and public street and passage called, etc., and near unto and by the aforesaid dwelling-houses, habitations, and residences of divers liege subjects of our said lady the Queen, there dwelling, inhabiting, and residing, and also near unto and by divers liege subjects of our said lady the Queen in the said open and public way and passage, on etc., and on the said other days and times there being, to the great and manifest danger of infecting with the said contagious, infectious, and dangerous disease and sickness, called the smallpox, all the liege subjects of our said lady the Queen, who on the several days and times aforesaid were in and near the aforesaid open and public way and passage, dwelling-houses, habitations, residences, and common highway, and who had not had the said disease and sickness; to the great damage and common nuisance of all the liege subjects of our said lady the Queen, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

Second count.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said M. B. well knowing that the said E. R. was so infected, ill, and sick as aforesaid, afterwards, and whilst the said E. R. was so infected, ill, and sick, to wit, on the said day of , in the year of the reign aforesaid, and on divers other days and times between that day and the said day of , in the same year, in the parish of , unlawfully and injuriously did take and carry the said E. R. into and along the aforesaid open public way and passage, called, etc., and near unto and by the aforesaid dwelling-houses, habitations, and residences of divers liege subjects of our said lady the Queen there dwelling, inhabiting, and residing, and also near unto and by divers liege subjects of our said lady the Queen, in the said open public way and passage, on the day of , in the year of the reign aforesaid, and on the said other days and times as last mentioned, there being, to the great and manifest danger of infecting with the said contagious, infectious, and dangerous disease and sickness, called the smallpox, divers of the liege subjects of our said lady the Queen, who, on the said, etc., and on the said divers other days and times last mentioned, were in the said open and public way and passage, and who dwelled, inhabited, and resided there and near thereto, and who were liable to take the said disease and sickness; to the great damage and common nuisance of all the liege subjects of our said lady the Queen, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

Oaths.

As to the examination of witnesses, etc., and the mode of administering an oath, see "*Evidence*," Vol. II.

As to false oaths, see tit. "*Perjury*," post.

As to profane swearing, see tit. "*Swearing*," Vol. V.

As to oaths for offices, see tit. "*Office and Officers*," post.

I. Oaths in general, and herein of the Power of Justices to administer them, p. 1075.

[5 & 6 Will. 4, c. 62, s. 13; 1 & 2 Vict. c. 105; 14 & 15 Vict. c. 99, s. 16.]

II. Affirmations in Lieu of Oaths, p. 1076.

[17 & 18 Vict. c. 125, ss. 20, 21; 24 & 25 Vict. c. 66.]

III. *Declarations instead of Oaths*, p. 1077.

5 & 6 Will. 4, c. 62; 31 & 32 Vict. c. 72, s. 14.]

IV. *Administering or taking Unlawful Oaths*, p. 1083.

[37 Geo. 3, c. 123; 52 Geo. 3, c. 104; 57 Geo. 3, c. 19.]

V. *Forms*, p. 1088.1. *Of Oaths in general, etc.*I. *Of Oaths in General, and herein of the Power of 'Justices' to administer them.*Oath is a corruption of the Saxon word *eoeth*. (3 *Inst.* 165.)

Oath.

It is called a corporal oath, because the person lays his hand upon some part of the Scripture when he takes it. (3 *Inst.* 165.)

Corporal oath.

If the oath be taken on the common prayer-book, which hath the epistles and gospels, it is good enough, and perjury upon the statute may be assigned upon this oath. (*Robeley v. Langston*, 2 *Keb.* 314.)

Oath taken on the common prayer-book.

The words, "So help me God," in the common form of an oath, perhaps may have been first used in the very ancient manner of trial by battle in this kingdom, or at least are delivered with a peculiar emphasis in that solemnity; wherein the appellee used to lay his right hand on the book, and with his left hand took the appellant by the right, and swore to this effect:—"Hear this, thou who callest thyself John by the name of baptism, whom I hold by the hand, that falsely upon me thou hast lied; and for this thou liest, that I, who call myself Thomas by the name of baptism, did not feloniously murder thy father W. by name. So help me God;" (and then he kissed the book, and said), "And this I will defend against thee by my body, as this Court shall award." And so the appellant was sworn in like manner. The words, "So help me God," are no part of the oath; they only point out the mode of administering it. (*Lancaster and Carlisle Railway Co. v. Heaton*, 27 *L. J.*, *Q. B.* 195; 8 *El. & Bl.* 952.) It will be seen that the 5 & 6 Will. 4, c. 62, *post*, 1077, substitutes declarations in lieu of oaths in a great number of cases, and renders it unnecessary, as formerly, to call God to witness on every trivial occasion. See also the 31 & 32 Vict. c. 72, s. 12, *post*, tit. "*Offices*."

"So help me God."

As to the form of the oath and how it is to be administered, see "*Evidence*," Vol. II.

Form of oath, and how administered.

The form varies according to the religion or country of the deponent. By the 1 & 2 Vict. c. 105, every person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such persons may declare to be binding.

In all cases where a magistrate has power to hear evidence, he has incidentally a power to administer an oath to the party who gives it. (14 & 15 Vict. c. 99, s. 16.)

Taking voluntary affidavits.

Sir *Wm. Blackstone*, in treating of perjury, etc., has made some remarks, which ought not to be omitted here: "The law takes no notice of any perjury but such as is committed in some court of justice, having power to administer an oath; or before some magistrate or proper officer, invested with a similar authority, in some proceedings relative to a civil suit or a criminal prosecution; for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them. For which reason, it is much to be questioned, how far any magistrate is justifiable in taking a voluntary affidavit in any extra-judicial matter, as is now too frequent upon every petty occasion; since it is more than possible,

2. *Affirmations in Lieu of Oaths.*

that, by such idle oaths, a man may frequently, *in foro conscientie*, incur the guilt, and at the same time evade the temporal penalties of perjury."

Lord *Kenyon*, indeed, in different cases, has expressed a doubt, whether a magistrate does not subject himself to a criminal information for taking a voluntary extra-judicial affidavit.

Justices prohibited from taking oaths in extra-judicial matters.

And the 5 & 6 Will. 4, c. 62, s. 13, *post*, 1079, expressly prohibits justices from administering oaths, touching matters whereof they have no jurisdiction, excepting in the cases therein provided for.

II. Affirmations in Lieu of Oaths.

Persons who refused to take an oath, were formerly inadmissible witnesses in criminal cases; but this objection to their admissibility was in part removed by the 9 Geo. 4, c. 32, the 3 & 4 Will. 4, c. 49, and the 3 & 4 Will. 4, c. 82, and now is wholly so by the 24 & 25 Vict. c. 66.

Affirmations in Courts of civil judicature.

By the 17 & 18 Vict. c. 125, s. 20, it is enacted, if any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in words following, *videlicet* :—

Form.

I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of an oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, etc.; [which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form].

Perjury.

By sect. 21, a false affirmation renders the person making it liable to be convicted of perjury.

Extent of Act.

By sect. 103, the above sections apply and extend to every Court of civil judicature.

Affirmation in criminal proceedings.

By the 24 & 25 Vict. c. 66, s. 1, it is enacted, that if any person called as a witness in any Court of criminal jurisdiction in England or Ireland, or required or desiring to make an affidavit or deposition in the course of any criminal proceeding, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, *videlicet* :—

Form.

I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, etc.; [which solemn affirmation and declaration shall be of the same force and effect as if such person had taken the oath in the usual form].

Perjury.

By sect. 2, a false affirmation renders the person making it liable to be convicted of perjury.

III. Declarations substituted for Oaths in certain Cases.

3. *Declarations substituted for Oaths, etc.*

By the 5 & 6 Will. 4, c. 62, intituled, "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of Voluntary and Extra-judicial Oaths and Affidavits; and to make other provisions for the Abolition of unnecessary Oaths,'" [9th September, 1835,] reciting the passing of the 5 Will. 4, c. 8, and that it was thereby enacted, that the said Act should commence and take effect from and after the 1st day of June in this present year, the year of our Lord 1835, it not being intended that the said recited Act should take effect before the same received the royal assent, and that the said recited Act did not receive the royal assent till after the said 1st day of June, 1835: and that it was enacted by the said recited Act, that from and after the 1st day of June next ensuing, it should not be lawful for any justice of the peace to administer or receive such voluntary oaths as are therein mentioned, it being intended that the said prohibition should take effect from the time of the commencement of the said recited Act: and that it is expedient to amend the said Act, and to make some further provisions for the better effecting the object thereof, and to consolidate all the provisions relating thereto into one Act: it is therefore enacted, that from and after the passing of this Act the said recited Act shall be and the same is hereby repealed.

5 & 6 Will. 4,
c. 62.

Repealed 5 Will.
4, c. 8.

Sec. 2. In any case where, by any Act or Acts made or to be made relating to the revenues of customs or excise, the post office, the office of stamps and taxes, the office of woods and forests, land revenues, works, and buildings, the war office, the army pay office, the office of the treasurer of the navy, the accountant-general of the navy, or the ordnance, his Majesty's treasury, Chelsea Hospital, Greenwich Hospital, the board of trade, or any of the offices of his Majesty's principal secretaries of state, the Indian board, the office for auditing the public accounts, the national debt office, or any office under the control, direction, or superintendence of the lords commissioners of his Majesty's treasury, or by any official regulation in any department, any oath, solemn affirmation, or affidavit might, but for the passing of this Act, be required to be taken or made by any person on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful for the lords commissioners of his Majesty's treasury, or any three of them, if they shall so think fit, by writing under their hands and seals, to substitute a declaration to the same effect as the oath, solemn affirmation, or affidavit which might but for the passing of this Act be required to be taken or made; and the person who might under the Act or Acts imposing the same be required to take or make such oath, solemn affirmation, or affidavit, shall, in presence of the commissioners, collector, other officer, or person empowered by such Act or Acts to administer such oath, solemn affirmation, or affidavit, make and subscribe such declaration, and every such commissioner, collector, other officer, or person is hereby empowered and required to administer the same accordingly.

Lords of treasury
empowered to
substitute a de-
claration in lieu
of an oath, etc.,
in certain cases.

Sec. 3. When the said lords commissioners of his Majesty's treasury or any three of them shall, in any such case as hereinbefore mentioned, have substituted, in writing under their hands and seals, a declaration in lieu of an oath, solemn affirmation, or affidavit, such lords commissioners shall, so soon as conveniently may be, cause a copy of the instrument substituting such declaration to be inserted and published in the *London Gazette*; and from and after the expiration of twenty-one days next following the day of the date of the *Gazette* wherein the copy of such instru-

Declaration substituted to be published in the *Gazette*, and after twenty-one days from the date thereof the provisions of this Act to apply; and no oath to be administered

*3. Declara-
tions substi-
tuted for
Oaths, etc.*

in lieu of which
such declaration
has been di-
rected.

False declara-
tions in matters
relating to cer-
tain revenues a
misdemeanour.

Oath of alle-
giance still to be
required in all
cases.

Oaths in Courts
of justice, etc.,
still to be taken.

Universities of
Oxford and Cam-
bridge, and other
bodies, may sub-
stitute a declara-
tion in lieu of an
oath.

Churchwarden's
and sidesman's
oath abolished,
and a declaration
to be made in
lieu thereof.

ment shall have been published, the provisions of this Act shall extend and apply to each and every case specified in such instrument, as well and in the same manner as if the same were specified and named in this Act.

Sect. 4. After the expiration of the said twenty-one days, it shall not be lawful for any commissioner, collector, officer, or other person to administer or cause to be administered, or receive or cause to be received, any oath, solemn affirmation, or affidavit, in the lieu of which such declaration as aforesaid shall have been directed by the lords commissioners of his Majesty's treasury to be substituted.

Sect. 5. If any person shall make and subscribe any such declaration as hereinbefore mentioned in lieu of any oath, solemn affirmation, or affidavit by any Act or Acts relating to the revenues of customs or excise, stamps and taxes, or post office, required to be made on the doing of any act, matter, or thing, or for verifying any book, account, entry, or return, or for any purpose whatsoever, and shall wilfully make therein any false statements as to any material particular, the person making the same shall be deemed guilty of a misdemeanour.

Sect. 6. Provided always, that nothing in this Act contained shall extend or apply to the oath of allegiance in any case in which the same now is or may be required to be taken by any person who may be appointed to any office, but that such oath of allegiance shall continue to be required, and shall be administered and taken, as well and in the same manner as if this Act had not been passed.

Sect. 7. Provided also, that nothing in this Act contained shall extend or apply to any oath, solemn affirmation, or affidavit which now is or hereafter may be made or taken, or be required to be made or taken, in any judicial proceeding in any Court of justice, or in any proceeding for or by way of summary conviction before any justice or justices of the peace, but all such oaths, affirmations, and affidavits shall continue to be required, and to be administered, taken, and made, as well and in the same manner as if this Act had not been passed.

Sect. 8. It shall be lawful for the universities of Oxford and Cambridge, and for all other bodies corporate and politic, and for all bodies now by law or statute, or by any valid usage, authorized to administer or receive any oath, solemn affirmation, or affidavit, to make statutes, bye-laws, or orders authorizing and directing the substitution of a declaration in lieu of any oath, solemn affirmation, or affidavit now required to be taken or made: Provided always, that such statutes, bye-laws, or orders be otherwise duly made and passed according to the charter, laws, or regulations of the particular university, other body corporate and politic, or other body so authorized as aforesaid.

Sect. 9. And whereas persons serving the offices of churchwarden and sidesman are at present required to take an oath of office before entering upon the execution thereof, and also an oath on quitting such office, and it is expedient that a declaration shall be substituted for such oath of office, and that the oath on quitting the same shall be abolished; be it enacted, that in future every person entering upon the office of churchwarden or sidesman, before beginning to discharge the duties thereof, shall, in lieu of such oath of office, make and subscribe, in the presence of the ordinary or other person before whom he would, but for the passing of this Act, be required to take such oath, a declaration that he will faithfully and diligently perform the duties of his office, and such ordinary or other person is hereby empowered and required to administer the same accordingly: Provided always, that no churchwarden or sidesman

shall in future be required to take any oath on quitting office, as has heretofore been practised (*a*).

Sect. 10. In any case where, under any Act or Acts for making, maintaining, or regulating any highway, or any road, or any turnpike road, or for paving, lighting, watching, or improving any city, town, or place, or touching any trust relating thereto, any oath, solemn affirmation, or affidavit, might, but for the passing of this Act, be required to be taken or made by any person whomsoever, no such oath, solemn affirmation, or affidavit shall in future be required to be or be taken or made, but the person who might under the Act or Acts imposing the same be required to take or make such oath, solemn affirmation, or affidavit shall, in lieu thereof, in the presence of the trustee, commissioner, or other person before whom he might, under such Act or Acts, be required to take or make the same, make and subscribe a declaration to the same effect as such oath, solemn affirmation, or affidavit, and such trustee, commissioner, or other person is hereby empowered and required to administer and receive the same.

Sect. 11. Whenever any person or persons shall seek to obtain any patent under the great seal for any discovery or invention, such person or persons shall, in lieu of any oath, affirmation, or affidavit which heretofore has or might be required to be taken or made upon or before obtaining any such patent, make and subscribe, in the presence of the person before whom he might, but for the passing of this Act, be required to take or make such oath, affirmation, or affidavit, a declaration to the same effect as such oath, affirmation, or affidavit; and such declaration, when duly made and subscribed, shall be to all intents and purposes as valid and effectual as the oath, affirmation, or affidavit in lieu whereof it shall have been so made and subscribed.

Sect. 12. Where by any Act or Acts at the time in force for regulating the business of pawnbrokers, any oath, affirmation, or affidavit might, but for the passing of this Act, be required to be taken or made, the person who by or under such Act or Acts might be required to take or make such oath, affirmation, or affidavit, shall in lieu thereof make and subscribe a declaration to the same effect; and such declaration shall be made and subscribed at the same time, and on the same occasion, and in the presence of the same person or persons, as the oath, affirmation, or affidavit in lieu whereof it shall be made and subscribed would by the Act or Acts directing or requiring the same be directed or required to be taken or made; and all and every the enactments, provisions, and penalties contained in or imposed by any such Act or Acts, as to any oath, affirmation, or affidavit thereby directed or required to be taken or made, shall extend and apply to any declaration in lieu thereof, as well and in the same manner as if the same were herein expressly enacted with reference thereto.

Sect. 13. And whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry, nor in anywise pending or at issue before the justice of the peace or other person by whom such oaths or affidavits have been administered or received: and whereas doubts have

3. *Declarations substituted for Oaths, etc.*

Declaration substituted for oaths and affidavits by persons acting in turnpike trusts.

Declaration substituted for oaths and affidavits heretofore required on taking out a patent.

Declaration substituted for oaths and affidavits required by Acts as to pawnbrokers.

Penalties as to such oaths, etc., to apply to declarations.

Justices not to administer oaths, etc., touching matters whereof they have no jurisdiction by statute.

(*a*) In an action by five churchwardens against one, it appeared that one of the five plaintiffs had not made any declaration under the above section; but his predecessor, who had made a declaration for the previous year, was willing to be substituted.

It was held that such predecessor need not have made a fresh declaration, inasmuch as he remained in office under his previous declaration till he had a properly constituted successor. (*Bremner v. Hull*, L. R., 1 C. P. 748; 35 L. J., C. P. 332.)

3. *Declarations substituted for Oaths, etc.*

Proviso.

arisen whether or not such proceeding is illegal; for the more effectual suppression of such practice and removing such doubts, be it enacted, that from and after the commencement of this Act, it shall not be lawful for any justice of the peace or other person to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit, or solemn affirmation touching any matter or thing whereof such justice or other person hath not jurisdiction or cognizance by some statute in force at the time being: (a) Provided always, that nothing herein contained shall be construed to extend to any oath, affidavit, or solemn affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, or touching any proceedings before either of the Houses of Parliament, or any committee thereof respectively, nor to any

(a) The defendant, a county magistrate, complained to the Bishop of Exeter of the conduct of two of his clergy; and to substantiate his charge he swore witnesses before himself, as magistrate, to the truth of the facts:—Held, that the matter before the bishop was not a judicial proceeding, and therefore that the magistrate had brought himself within the above enactment of 5 & 6 Will. 4, c. 62; and that he had unlawfully administered voluntary oaths, contrary to the enactment of that statute. (*Reg. v. Nott*, 1 Car. & M. 288,—*coram Coleridge, J.*)

The above case was tried at the assizes at Exeter, when the defendant was convicted, and at his request was sentenced *instantly*, and the learned judge sentenced him to one month's imprisonment. The sentence was, however, then respite until the sixth day of the then next term. A rule was subsequently obtained for arresting the judgment or for a new trial. The indictment was framed under the above enactment, and the first count stated that the defendant, being one of the justices of the peace, did unlawfully administer to and receive from one Huxtable a certain voluntary oath touching certain matters and things, whereof he (the defendant) neither then nor at any other time had any jurisdiction or cognizance by any statute, etc. The second count was nearly similar. The third count set out, that the said John Nott (without saying he was a magistrate) did unlawfully administer to and receive from a certain person, that is to say, one John Huxtable, an oath touching certain matters and things whereof the said John Nott, at the time last aforesaid, had not any jurisdiction or cognizance at the time of administering and receiving the last-mentioned oath, the same oath

not being before any justice, in any matter or thing touching the preservation of the peace or the prosecution, trial, or punishment of offences, nor the subject of any judicial inquiry, nor in anywise pending before the said John Nott.

The rule which had been granted was moved for on various grounds, but chiefly to the effect that the indictment was bad: one ground was, that it was not an offence; that if it was an offence, the indictment did not state that it had been committed wilfully; that in the third count it only stated "the said John Nott," and did not again allege that he was a magistrate; and another ground was, that the indictment did not set forth the oath itself or deposition upon the face of it (although it was stated that the prosecutors could not in any way obtain that deposition).

The Court having decided that there could be no doubt of the power of the Court to entertain the point, notwithstanding sentence had been pronounced, it was not necessary to inquire into any of the points but one, because the indictment did not sufficiently state an offence within the Act of Parliament,—the question whether or not the party had jurisdiction to administer an oath was matter of law, depending upon the facts upon which the Court ought to form an opinion. Those facts should have been distinctly stated, and the matter or writing relative to which the defendant was said to have acted improperly should have been stated to the Court in the indictment, so that the Court might have expressed an opinion whether the defendant had jurisdiction; and the want of that averment was a sufficient objection to the indictment. The rule for arresting the judgment was made absolute. (4 Q. B. 768.)

oath, affidavit, or affirmation which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries respectively. (See sect. 18, *post.*)

Sect. 14. In any case in which it has been the usual practice of the Bank of England to receive affidavits on oath to prove the death of any proprietor of any stocks or funds transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stocks or funds, or relating to the loss, mutilation, or defacement of any bank note or bank post bill, no such oath or affidavit shall in future be required to be taken or made, but in lieu thereof the person who might have been required to take or make such oath or affidavit shall make and subscribe a declaration to the same effect as such oath or affidavit.

Sect. 15. And whereas an Act was passed in the fifth year of the reign of his late Majesty king George the second, intituled "An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America:" and whereas another Act was passed in the fifty-fourth year of the reign of his late Majesty king George the third, intituled "An Act for the more easy Recovery of Debts in his Majesty's Colony of New South Wales:" and whereas it is expedient that in future a declaration should be substituted in lieu of the affidavit on oath authorized and required by the said recited Acts; be it therefore enacted, that from and after the commencement of this Act, in any action or suit then depending or thereafter to be brought or intended to be brought in any Court of law or equity within any of the territories, plantations, colonies, or dependencies abroad, being within and part of his Majesty's dominions, for or relating to any debt or account wherein any person residing in Great Britain and Ireland shall be a party, or for or relating to any lands, tenements, or hereditaments, or other property, situate, lying, and being in the said places respectively, it shall and may be lawful to and for the plaintiff or defendant, and also to and for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing relating thereto by solemn declaration or declarations in writing in the form in the schedule hereunto annexed, made before any justice of the peace, notary public, or other officer, now by law authorized to administer an oath, and certified and transmitted under the signature and seal of any such justice, notary public duly admitted and practising, or other officer; which declaration, and every declaration relative to such matter or thing as aforesaid, in any foreign kingdom or state, or to the voyage of any ship or vessel, every such justice of the peace, notary public, or other officer, shall be, and he is hereby authorized and empowered to administer or receive; and every declaration so made, certified, and transmitted, shall in all such actions and suits be allowed to be of the same force and effect as if the person or persons making the same had appeared and sworn or affirmed the matters contained in such declaration *vivâ voce* in open Court, or upon a commission issued for the examination of witnesses or of any party in such action or suit respectively; provided that in every such declaration there shall be expressed the addition of the party making such declaration, and the particular place of his or her abode.

Sect. 16. It shall and may be lawful to and for any attesting witness to the execution of any will or codicil, deed or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication, or delivery of any such will, codicil, deed, or instrument in writing, by such declaration in writing made as aforesaid, and every such justice, notary, or other officer, shall be and is hereby authorized and empowered to administer or receive such declaration.

3. *Declarations substituted for Oaths, etc.*

Declaration substituted for oaths and affidavits required by Bank of England on the transfer of stock.

Declaration substituted for oaths and affidavits required by 5 Geo. 2, c. 7, and 54 Geo. 3, c. 15.

Declaration in writing sufficient to prove execution of any will, codicil, etc.

3. *Declarations substituted for Oaths, etc.*

Suits on behalf of his Majesty to be proved by declaration.

Voluntary declaration in the form in schedule may be taken (a).

Making false declaration a misdemeanour.

Fees on oaths payable on declarations substituted in lieu thereof.

Declarations to be in the form prescribed by schedule.

Persons making false declaration deemed guilty of a misdemeanour.

Sect. 17. In all suits now depending or hereafter to be brought in any Court of law or equity by or in behalf of his Majesty, his heirs and successors, in any of his said Majesty's territories, plantations, colonies, possessions, or dependencies, for or relating to any debt or account, that his Majesty, his heirs and successors, shall and may prove his and their debts and accounts, and examine his or their witness or witnesses by declaration, in like manner, as any subject or subjects is or are empowered or may do by this present Act.

Sect. 18. And whereas it may be necessary and proper in many cases not herein specified to require confirmation of written instruments or allegations, or proof of debts, or of the execution of deeds or other matters; be it therefore further enacted, that it shall and may be lawful for any justice of the peace, notary public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form in the schedule to this Act annexed (a); and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanour.

Sect. 19. Whenever any declaration shall be made and subscribed by any person or persons under or in pursuance of the provisions of this Act, or any of them, all and every such fees or fee as would have been due and payable on the taking or making any legal oath, solemn affirmation, or affidavit, shall be in like manner due and payable upon making and subscribing such declaration.

Sect. 20. In all cases where a declaration in lieu of an oath shall have been substituted by this Act, or by virtue of any power or authority hereby given, or where a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the schedule hereunto annexed.

Sect. 21. In any case where a declaration is substituted for an oath under the authority of this Act, or by virtue of any power or authority hereby given, or is directed and authorized to be made and subscribed under the authority of this Act, or by virtue of any power hereby given, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanour.

Sect. 22. This Act shall commence from and after the 1st day of October, 1835.

SCHEDULE REFERRED TO BY THE 5 & 6 WILL. IV. c. 62.

Form of declaration.

"I, A. B., do solemnly and sincerely declare that and I make
this solemn declaration, conscientiously believing the same to be true, and by virtue
of the provisions of an Act made and passed in the *year of the reign of*
his present Majesty, intituled "An Act [here insert the title of this Act]."

(a) It seems that under this 18th section, any person by law competent to administer an oath is authorized to receive a declaration, in any case in which he may think it necessary and proper; but, by the 20th section,

in any such case, and generally, unless some other form of declaration is specially directed, the form prescribed in the schedule to the Act must be adopted at full length, and signed by the party making the declaration.

By the saving clause (sect. 14) of the 31 & 32 Vict. c. 72, subsection 9, nothing in that Act contained is to affect "any power of substituting a declaration for an oath vested in the commissioners of her Majesty's treasury by the above Act, 5 & 6 Will. 4, c. 62." See *ante*, 1077.

By the same statute, provision is made for the substitution of declarations for oaths on the acceptance of municipal and other offices. (See tit. "*Offices*," *post*.)

4. *Administering or taking unlawful Oaths.*

IV. Administering or taking unlawful Oaths.

By the 37 Geo. 3, c. 123, s. 1, reciting that "divers wicked and evil-disposed persons have of late attempted to seduce persons serving in his Majesty's forces by sea and land, and others of his Majesty's subjects, from their duty and allegiance to his Majesty, and to incite them to acts of mutiny and sedition, and have endeavoured to give effect to their wicked and traitorous proceedings by imposing upon the persons whom they have attempted to seduce the pretended obligation of oaths unlawfully administered," it is enacted, "that any person or persons who shall, in any manner or form whatsoever, administer, or cause to be administered or be aiding or assisting at, or present at and consenting to the administering or taking of any oath or engagement, purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose; or to disturb the public peace; or to be of any association, society, or confederacy formed for any such purpose; or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose; or not to inform or give evidence against any associate, confederate, or other person; or not to reveal or discover any unlawful combination or confederacy, or not to reveal or discover any illegal act done or to be done; or not to reveal or discover any illegal oath or engagement which may have been administered or tendered to or taken by such person or persons, or to or by any other person or persons, or the import of any such oath or engagement; shall, on conviction thereof by due course of law, be adjudged guilty of felony, and may be transported [penal servitude] for any term of years not exceeding seven years [and not less than five]; and every person who shall take any such oath or engagement, not being compelled thereto, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and may be transported [penal servitude] for any term of years not exceeding seven years [and not less than five]."

Oaths for mutinous or seditious and other unlawful purposes.

Felony.

Punishment.

Sect. 2. Compulsion shall not justify or excuse any person taking such oath or engagement unless he or she shall, within four days after the taking thereof, if not prevented by actual force or sickness, and then within four days after the hindrance produced by such force or sickness shall cease, declare the same, together with the whole of what he or she shall know touching the same, and the person or persons by whom, and in whose presence, and when and where such oath or engagement was administered or taken, by information on oath before one of his Majesty's justices of the peace, or one of his Majesty's principal secretaries of state, or his Majesty's privy council; or, in case the person taking such oath or engagement shall be in actual service in his Majesty's forces by sea or land, then by such information on oath as aforesaid, or by information to his commanding officer.

Persons compelled to take such oaths not justified unless they declare the same within four days.

Sect. 3. Persons aiding and assisting at, or present at, and consenting to the administering or taking of any such oath or engagement as aforesaid, and persons causing any such oath or engagement to be administered or taken, though not present at the administering or taking thereof,

Persons aiding, etc., at taking such oaths, though not present, to be

4. *Administering or taking unlawful Oaths.*

deemed principals.

In indictments it shall be sufficient to set forth the purport of such oaths.

Engagements in the nature of an oath to be deemed oaths, etc.

Where offences may be prosecuted.

Not triable at sessions.

Statute not confined to oaths administered for seditious purposes.

shall be deemed principal offenders, and shall be tried as such, although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted.

Sect. 4. It shall not be necessary, in any indictment against any person or persons administering or causing to be administered or taken, or taking any such oath or engagement as aforesaid, or aiding or assisting at, or present at and consenting to the administering or taking thereof, to set forth the words of such oath or engagement; and that it shall be sufficient to set forth the purport of such oath or engagement, or some material part thereof.

Sect. 5. Any engagement or obligation whatsoever, in the nature of an oath, shall be deemed an oath within the intent and meaning of this Act, in whatever form or manner the same shall have been administered or taken; and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any person or persons without any administration thereof by any other person or persons.

Sect. 6. Any offence committed against this Act on the high seas, or out of this realm, or within that part of Great Britain called England, shall and may be prosecuted, tried, and determined before any Court of oyer or terminer or gaol delivery, for any county in that part of Great Britain called England, in such manner and form as if such offence had been therein committed: and if committed in that part of Great Britain called Scotland, shall and may be prosecuted, tried, and determined, either before the Justiciary Court at Edinburgh, or in any of the circuit Courts in that part of the United Kingdom.

By the 5 & 6 Vict. c. 38, s. 1, the offence of administering or taking unlawful oaths is not triable at any quarter sessions.

In a case in the Court of King's Bench on this statute a question was made, whether the unlawful administering of an oath by an associated body of men to a person, purporting to bind him not to reveal or discover an unlawful combination or conspiracy of persons, nor any illegal act done by them (*a*), was within the statute; the object of the association being a conspiracy to raise wages and make regulations in a certain trade, and not to stir up mutiny or sedition: it was contended that the words of the statute, however large in themselves, must be confined to the objects stated in the preamble, and could not have been intended to reach a case where it was plain that the fact arose entirely out of a private dispute between persons engaged in the same trade, and was confined in its object to that alone; and that the general words, therefore, must be construed with relation to the antecedent offences, which are confined in their objects to mutiny and sedition. But the Court, though they did not upon the particular circumstances feel themselves called upon to give an express decision, appear to have entertained no doubt but that the case was within the statute. And in delivering his opinion *Lawrence, J.*, observed, "It is true that the preamble and the first part of the enacting clause are confined in their objects to cases of mutiny and sedition, but it is nothing unusual in Acts of parliament for the enacting part to go beyond the preamble: the remedy often extends beyond the particular act or mischief which first suggested the necessity of the law." (*R. v. Marks and others*, 3 *East*, 157; 1 *Russ.* 187, 4th edit.)

And where several persons about to go armed for the purpose of night

(*a*) The oath was, "You shall be true to every journeyman shearman, and not to hurt any of them, and you shall

not divulge any of their secrets. So help you God."

poaching were sworn to secrecy, it was holden to be a case within the Act. (*R. v. Brodribb*, 6 Car. & P. 571.)

So where the oath bound the party not to make buttons under a certain price, and to keep all the secrets of the lodge, it was holden to be within the Act. (*R. v. Ball*, 6 Car. & P. 563.)

And in *R. v. Loveless and others*, the defendants were convicted of administering unlawful oaths not to inform or give evidence against any associate or other person charged with any unlawful combination, and not to reveal or discover such unlawful combination, or any illegal act done or to be done, and not to discover any illegal oath which might be taken. (1 M. & Rob. 349; 6 C. & P. 596, S. C.)

It is immaterial in what form the oath or engagement may be framed (*Id.*), or whether the party be sworn on the Testament or not, if he believe himself to be bound by the oath administered. (*R. v. Brodribb*, *supra.*)

4. Administering or taking unlawful Oaths.

Form of oath not material.

If the oath or engagement were read from a paper at the time it was administered, still it is not necessary to produce such paper, or give the defendant notice to produce it; but parol evidence of its purport, without such notice, will be sufficient. (*R. v. Moors*, 6 East, 421.)

Evidence.

So parol evidence of any declarations made by the defendant at the time he administered the oath will be received in proof of the nature of the oath, if that do not sufficiently appear from the words of the oath itself. (*Id.*)

The 52 Geo. 3, c. 104, s. 1, was passed to render the preceding statute more effectual, and enacts, "That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy; and every person who shall take any such oath or engagement, not being compelled thereto, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and shall be transported as a felon for the term of his natural life, or for such term of years as the Court before which the said offender or offenders shall be tried shall adjudge."

Oaths to commit treason or felony.

[But by 1 Vict. c. 91, ss. 1, 2, 20 & 21 Vict. c. 3, s. 2, and 27 & 28 Vict. c. 47, the offender shall be transported for life [penal servitude], or not less than [five years], or be imprisoned, with or without hard labour, for not more than three years, and the Court may direct him to be kept in solitary confinement, for any part of the time not exceeding one month at a time, or three months in any one year.]

Punishment.

By sect. 2 it is provided as by the 2nd sect. of 37 Geo. 3, c. 123 (*ante*, 1083), except that the words "fourteen days" are substituted for "four days."

Sect. 3. Every person who, before he shall be charged with any offence under the said recited Act [37 Geo. 3, c. 124] or this Act, in taking any oath or engagement described in the said recited Act or this Act, shall, within three months after the passing of this Act, appear before some justice of the peace or magistrate, and declare the same, and the oath or engagement so taken, and when and where the same was taken, and in what manner, and who shall, at the same time, take before such justice of the peace or magistrate the oath of allegiance to his Majesty, shall be and is hereby indemnified against any prosecution for any offence under the said recited Act or this Act; and no confession so made by any such person shall be given in evidence against the person making the same in any Court, or in any case whatever.

Persons confessing before being charged indemnified.

Sect. 4. Persons aiding and assisting at the administering of any such

Persons, aiding,

4. *Administering or taking unlawful Oaths.*

etc., deemed principals.

In indictments, sufficient to set forth purport of such oaths.

oath or engagement as aforesaid, and persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall be tried as such, and, on conviction thereof by due course of law, shall be adjudged guilty of felony, and shall suffer death as felons, without benefit of clergy [abolished; for punishment, see above], although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted.

Sect. 5. It shall not be necessary, in any indictment against any person or persons administering, or causing to be administered or taken, or taking any such oath or engagement as aforesaid, or aiding or assisting at, or present at, and consenting to the administering or taking thereof, to set forth the words of such oath or engagement, and that it shall be sufficient to set forth the purport of such oath or engagement, or some material part thereof.

Upon an indictment on the 37 Geo. 3, the fourth count charged that the defendants administered to J. H. an oath, "intended to bind him not to inform or give evidence against any member of a certain society formed to disturb the public peace, for any act or expression of his or theirs done or made, collectively or individually, in or out of that or other similar societies, in pursuance of the spirit of that obligation;" and the eighth count stated the oath to be "intended to bind the said J. H. not to give evidence against any associate in certain associations and societies of persons formed for seditious purposes;" and the other counts stated the objects of the oath administered, and the objects of the society, differently and more generally, adapted to the several prohibitory parts of the statute. Upon objection taken at the trial to the generality of the statement in the indictment, Lord *Alvanley*, C.J., was of opinion that the Act intended that it should be sufficient to allege and prove what the object of the oath and engagement was, without stating any words at all; and that the offence being described in the words of the Act was well described; but that, supposing the objection made to the generality of the counts was good, which he did not admit, yet, that in the fourth and eighth, a material part of the oath or engagement was set forth, according to the clause of the Act. The point was submitted to the judges, who, without giving any opinion against the other counts, all agreed that at any rate the fourth and eighth counts were good. (*R. v. Moors and others*, 6 *East*, 419, n. (b).)

Where the party administering the oath held a paper from which the witness supposed he read the oath, parol evidence was admitted without notice to produce the paper. Where the oath was not seditious on the face of it, parol evidence was admitted to show that "*the brotherhood*" referred to was a seditious society. (*Id.*) (a).

Societies, the members whereof are required to take unlawful oaths, etc., within the 37 Geo. 3, c. 123, and 52 Geo. 3, c. 104, etc.,

By 57 Geo. 3, c. 19, s. 25, from and after the passing of this Act all and every the said societies or clubs, and also all and every other society or club now established, or hereafter to be established, the members whereof shall be required or admitted to take any oath or engagement, which shall be an unlawful engagement within the meaning of the 37 Geo. 3, c. 123, or within the meaning of the 52 Geo. 3, c. 104, "or to take any oath not required or authorized by law; and every society or club, the members whereof, or any of them, shall take or in any manner

(a) Both the 37 Geo. 3 and the 52 Geo. 3 provide that offences committed on the high seas or out of the realm, or in England, shall be tried in any Court of oyer and terminer or gaol delivery for any county in Eng-

land in such manner and form as if such offence had been therein committed; and that any person tried and convicted or acquitted under these Acts cannot be afterwards tried for high treason for the same offence.

bind themselves by any such oath or engagement, on becoming, or in order to become, or in consequence of being a member or members of such society or club; and every society or club, the members or any member whereof shall be required or admitted to take, subscribe, or assent to, or shall take, subscribe, or assent to any test or declaration not required or authorized by law, in whatever manner or form such taking or assenting shall be performed, whether by words, signs, or otherwise, either on becoming, or in order to become, or in consequence of being a member or members of any such society or club; and every society or club that shall elect, appoint, nominate, or employ any committee, delegate, or delegates, representative or representatives, missionary or missionaries, to meet, confer, or communicate with any other society or club, or with any committee, delegate or delegates, representative or representatives, missionary or missionaries of such other society or club, or to induce or persuade any person or persons to become members thereof, shall be deemed and taken to be unlawful combinations and confederacies, within the meaning of" the 39 Geo. 3, c. 79, "and shall and may be prosecuted, proceeded against, and punished according to the provisions of the said Act; and every person who from and after the passing of this Act shall become a member of any such society or club, or who, after the passing of this Act, shall act as a member thereof, and every person who, from and after the passing of this Act, shall directly or indirectly, maintain correspondence or intercourse with any such society or club, or with any committee or delegate, representative or missionary, or with any officer or member thereof as such, or who shall, by contribution of money or otherwise, aid, abet, or support such society or club, or any members or officers thereof, as such, shall be deemed guilty of an unlawful combination and confederacy within the intent and meaning of the said Act [39 Geo. 3, c. 79], and shall and may be proceeded against, prosecuted, and punished according to the provisions of the said Act with regard to the prosecution and punishment of unlawful combinations and confederacies." (*R. v. Dixon*, 6 C. & P. 601.)

4. *Administering or taking unlawful Oaths.*

deemed guilty of unlawful combination within 39 Geo. 3, c. 79.

Persons becoming members of such societies, etc.,

deemed guilty of unlawful combinations within 39 Geo. 3, c. 79.

Sect. 26. Nothing in this Act contained shall extend, or be construed to extend, to any society or societies holden under the denomination of lodges of freemasons, in conformity to the rules prevailing in such societies of freemasons, provided such lodges shall comply with the rules and regulations contained in the said Act of 39 Geo. 3, c. 79, relating to such lodges of freemasons, nor to any declaration to be taken, subscribed, or assented to by the members of any society, the form of which declaration shall have been first approved and subscribed by two or more justices of the peace, and confirmed by the major part of the justices present at a general session, or at a general quarter sessions of the peace, pursuant to the rules and regulations contained in the said Act of 39 Geo. 3, c. 79; nor shall extend, or be construed to extend, to any meeting or society of the people commonly called Quakers, or to any meeting or society formed or assembled for purposes of a religious or charitable nature only, and in which no other matter or business whatsoever shall be treated of or discussed.

Proviso for freemasons' lodges, and for declaration approved by two justices, pursuant to 39 Geo. 3, c. 79, and for meetings or societies of Quakers, or for charitable purposes.

It has been doubted whether an indictment can be sustained for administering an oath contrary to the 5 & 6 Will. 4, c. 62, s. 13, see *ante*, 1079, and at least the indictment must set out so much of the oath as may enable the Court to see whether or not it is of the nature contemplated by the statute (*R. v. Nott*, 4 Q. B. 768), and it would be safer to set out the whole of the oath. (See 1 *Russ. on Cr.* 4th edit., p. 193, n. (a).)

5. Forms.

Commitment on
52 Geo. 3, c. 104,
for administering
an unlawful
oath.

(For the usual form of commencement and conclusion, see tit. "Commitment," Vol. I.) on _____ at _____, feloniously did administer unto one C. D. a certain oath, purporting and intended to bind the said C. D. to engage in certain mutinous and seditious purposes [as the case may be]; against the form of the statute in such case made and provided. And you the said keeper, etc.

V. Forms.

Indictment on 37
Geo. 3, c. 123,
s. 1, for a like
offence.

_____ } The jurors for our lady the Queen upon their oath present, that
to wit, } C. D., on the _____ day of _____, in the
year of the reign of our sovereign lady Victoria, did feloniously and unlawfully administer and cause to be administered unto one O. O., a certain oath and engagement, purporting, and then intended, to bind the said O. O. not to inform or give evidence against any associate, confederate, or other person of and belonging to a certain unlawful association and confederacy (a); and which said oath and engagement was then taken by the said O. O.; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

The like on 52
Geo. 3, c. 104.

(Commence as in preceding form.) a certain oath and engagement (a) purporting and then intended to bind the said O. O. to commit high treason [or, commit murder, that is to say, feloniously and of his malice aforethought to kill and murder one A. B., or, commit a certain felony punishable by law with death, that is to say, feloniously to set fire to a certain dwelling-house of one A. B., the said A. B. being therein]: and which said oath and engagement was then taken by the said O. O.; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity. (See this form, Jerv. Arch. C. L. 9th edit. 548.)

Indictment for
taking such an
oath under 37
Geo. 3, c. 123.

(Commence as in last form but one.) did feloniously and unlawfully take a certain oath and engagement purporting [etc., as in the last precedent but one]; he the said C. D. not being then compelled (see sect. 2, ante, 1083) to take the said oath and engagement; against the form, etc.

Justices, etc.,
may authorize
search of sus-
pected premises.

Sect. 1. It shall be lawful for any metropolitan police magistrate or other stipendiary magistrate, or for any two justices of the peace, upon complaint made before him or them upon oath that the complainant has

Obscene Books.

By the 20 & 21 Vict. c. 83, entitled "An Act for more effectually preventing the Sale of obscene Books, Pictures, Prints, and other Articles" [25th August, 1857], after reciting that it is expedient to give additional powers for the suppression of the trade in obscene books, prints, drawings, and other obscene articles, it is enacted as follows:—

(a) Perhaps the oath itself should be set out, and if the precise form can be ascertained, it would certainly

be safest to add one or more counts setting it out.

reason to believe, and does believe, that any obscene books, papers, writings, prints, pictures, drawings, or other representations are kept in any house, shop, room, or other place within the limits of the jurisdiction of any such magistrate or justices, for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, which complainant shall also state upon oath that one or more articles of the like character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid, at or in connection with such place, so as to satisfy such magistrate or justices that the belief of the said complainant is well founded, and upon such magistrate or justices being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanour, and proper to be prosecuted as such, to give authority by special warrant to any constable or police officer into such house, shop, room, or other place, with such assistance as may be necessary, to enter in the daytime, and, if necessary, to use force, by breaking open doors or otherwise, and to search for and seize all such books, papers, writings, prints, pictures, drawings, or other representations as aforesaid found in such house, shop, room, or other place, and to carry all the articles so seized before the magistrate or justices issuing the said warrant, or some other magistrate or justices exercising the same jurisdiction; and such magistrate or justices shall thereupon issue a summons calling upon the occupier of the house or other place which may have been so entered by virtue of the said warrant to appear within seven days before such police stipendiary magistrate or any two justices in petty sessions for the district, to show cause why the articles so seized should not be destroyed; and if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid, or shall appear, and such magistrate or justices shall be satisfied that such articles or any of them are of the character stated in the warrant, and that such or any of them have been kept for any of the purposes aforesaid, it shall be lawful for the said magistrate or justices, and he or they are hereby required, to order the articles so seized, except such of them as he or they may consider necessary to be preserved as evidence in some further proceeding, to be destroyed at the expiration of the time hereinafter allowed for lodging an appeal, unless notice of appeal as hereinafter mentioned be given, and such articles shall be in the meantime impounded; and if such magistrate or justices shall be satisfied that the articles seized are not of the character stated in the warrant, or have not been kept for any of the purposes aforesaid, he or they shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized.

Sect. 2. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity, trespass, or other wrongful proceeding, before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant in any such action, by leave of the Court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he shall think fit, whereupon such proceeding, order, and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

Tender of
amends, etc.

Sect. 3. No action, suit, or information, or any other proceeding, of what nature soever, shall be brought against any person for anything done or omitted to be done in pursuance of this Act, or in the execution of the authorities under this Act, unless notice in writing shall be given by the party intending to prosecute such action, suit, information, or

Limitation of
actions.

Office and Officers.

other proceeding, to the intended defendant, one calendar month at least before prosecuting the same, nor unless such action, suit, information, or other proceeding shall be brought or commenced within three calendar months next after the act or omission complained of, or in case there shall be a continuation of damage, then within three calendar months next after the doing such damage shall have ceased.

Appeal.

Sect. 4. Any person aggrieved by any act or determination of such magistrate or justices in or concerning the execution of this Act, may appeal to the next general or quarter sessions for the county, riding, division, city, borough, or place in and for which such magistrate or justices shall have so acted, given to the magistrate or justices of the peace whose act or determination shall be appealed against notice in writing of such appeal, and of the grounds thereof, within seven days after such act or determination and before the next general or quarter sessions, and entering within such seven days into a recognizance, with sufficient surety, before a justice of the peace for the county, city, borough, or place in which such act or determination shall have taken place, personally to appear and prosecute such appeal, and to abide the order of and pay such costs as shall be awarded by such Court of quarter sessions or any adjournment thereof, and the Court at such general or quarter sessions shall hear and determine the matter of such appeal, and shall make such order therein as shall to the said Court seem meet; and such Court, upon hearing and finally determining such appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper: and if such appeal be dismissed or decided against the appellant or be not prosecuted, such Court may order the articles seized forthwith to be destroyed: Provided always, that it shall not be lawful for the appellant on the hearing of any such appeal to go into or give evidence of any other grounds of appeal against any such order, act, or determination than those set forth in such notice of appeal.

Act not to extend to Scotland.

Sect. 5. This Act shall not extend to Scotland.

Office and Officers.

See the different titles of officers throughout the work, as "*Sheriff*," "*Coroner*," "*Clerk of the Peace*," "*Constable*," "*Clerk of the Parish*," "*Churchwardens*," "*Sexton*," etc.

As to corporations and corporate officers, see "*Corporation*," Vol. I.

As to extortion by officers, see tit. "*Extortion*," Vol. II.

As to bribing officers, see tit. "*Bribery*," Vol. I.

As to proof of holding offices, see tit. "*Evidence*," Vol. II.

As to proceeding by *mandamus* relative to, see "*Mandamus*," ante, 808.

Office, what is.

It is said that the word *officium* principally implies a duty; and, in the next place, the charge of such duty, and that it is a rule that where one man hath to do with another's affairs against his will, and without his leave, that this is an office, and he who is in it is an officer. (*Bac. Ab. Office & Officer* (A).)

Difference between an office and employment.

There is a difference between an office and employment, every office being an employment; but there are employments which do not come under the denomination of offices, such as an agreement to make hay, plough land, herd a flock, etc., which differ widely from that of steward of a manor, etc. (*Id.*; 2 *Sid.* 142.)

Officers are distinguished into civil and military, according to the nature of their several trusts. (*Carth.* 479.)

1. *Qualifications for Officers, etc.*

Officers are distinguished into those which are of a public and those which are of a private nature. And herein it is said that every man is a public officer who hath any duty concerning the public, and he is not the less a public officer where his authority is confined to narrow limits; because it is the duty of his office, and the nature of that duty, which makes him a public officer, and not the extent of his authority. (*Id.*; *Bac. Ab. Office & Officer (A).*)

Officers are civil or military.
Public or private.

Offices are distinguished into ancient offices, and those which are of new creation; and herein it is observable that constant usage hath not only sanctified the first establishment of such ancient offices as have existed time out of mind, but also hath prescribed and settled the manner in which they have and are to continue to exist, in what manner to be exercised, how to be disposed of, etc. (*Bac. Ab. Office & Officer (A).*)

Ancient and new offices,

It may be here observed, that no officer that is constituted by Act of Parliament hath more authority than the Act that creates him, or some subsequent Act doth give him, for he cannot prescribe as an officer at common law may do. (*4 Inst.* 267.)

There is also another distinction of offices into such as are judicial and such as are ministerial offices, only the first relating to the administration of justice, or the actual exercise thereof, must be executed by persons of sufficient capacity, and by the persons themselves to whom they are granted; and herein also ancient usage and custom must govern. (*Bac. Ab. Office & Officer (A).*)

Judicial and ministerial.

Where the exercise of an office can be attributed to two titles, one good and the other bad, it will be attributed to the good title, unless the party exercising the office has disclaimed the good title. (*Reg. v. Thomas*, 2 *Jur.* 347, *Q. B.*; 3 *Nev. & P.* 288.)

Office held by two titles, one of which bad.

We shall now proceed to inquire into—

I. *The Qualifications for Offices in General, and Oaths for*, p. 1091.

[29 *Vict.* c. 22; 30 & 31 *Vict.* c. 62; 30 & 31 *Vict.* c. 75; 31 & 32 *Vict.* c. 72.]

II. *Refusing to accept and neglecting and misbehaving in Offices*, p. 1097.

III. *Buying and Selling Offices*, p. 1099.

[12 *Rich.* 2, c. 2; 4 *Hen.* 4, c. 5; 5 & 6 *Edw.* 6, c. 16; 49 *Geo.* 3, c. 126; 53 *Geo.* 3, c. 54.]

I. *Qualifications for Offices in general, and Oaths for.*

By the ancient common law, officers ought to be honest men, legal and sage, *et qui melius sciant et possint officio illi intendere*; and this, says my Lord *Coke*, was the policy of prudent antiquity, that officers did ever give grace to the place, and not the place only to grace the officer. (*Bac. Ab. Office & Officers (A).*)

Qualifications at common law.

Oaths of Allegiance, Supremacy, and Abjuration.

By the 25 *Car.* 2, c. 2, s. 1; the 1 *Geo.* 1, st. 2, c. 13, s. 2; the 2 *Geo.* 2,

1. Qualifications for Officers, etc.

c. 31, ss. 3, 4, and the 9 Geo. 2, c. 26, s. 3, persons entering into certain offices were required to take the oaths of allegiance, supremacy, and abjuration; but by the 30 & 31 Vict. c. 75, s. 5, the oath there given was substituted for the oath previously required; and the law with regard to oaths and declarations to be made upon taking offices is now to be found in the 31 & 32 Vict. c. 72, which provides another form of oath in place of that required by the 30 & 31 Vict. c. 75.

By the 31 & 32 Vict. c. 72, entitled, "An Act to amend the Law relating to Promissory Oaths," [31st July, 1868,] after reciting that it is expedient to amend the law relating to promissory oaths: it is enacted as follows:—

Short title.

Sect. 1. This Act may be cited for all purposes as the "Promissory Oaths Act, 1868."

PART I.

Oaths to be Continued.

(Oath of Allegiance. Official and Judicial Oaths.)

Form of oath of allegiance.

Sect. 2. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

*I, _____, do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors, according to law.
So help me God.*

Form of official oath.

Sect. 3. The oath in this Act referred to as the official oath shall be in the form following; that is to say,

*I, _____, do swear that I will well and truly serve her Majesty Queen Victoria in the office of _____.
So help me God.*

Form of judicial oath.

Sect. 4. The oath in this Act referred to as the judicial oath shall be in the form following; that is to say,

*I, _____, do swear that I will well and truly serve our Sovereign Lady Queen Victoria in the office of _____, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or illwill.
So help me God.*

Persons to take the oath of allegiance and official oath.

Sect. 5. The oath of allegiance and official oath shall be tendered to and taken by each of the officers named in the first part of the schedule annexed hereto as soon as may be after his acceptance of office by the officer, and in the manner in that behalf mentioned in the said first part of the said schedule.

Persons to take the oath of allegiance and judicial oath.

Sect. 6. The oath of allegiance and judicial oath shall be taken by each of the officers named in the second part of the said schedule hereto as soon as may be after his acceptance of office, and such oaths shall be tendered and taken in manner in which the oaths required to be taken by such officer previously to the passing of this Act on entering his office would have been tendered and taken.

Penalty on not taking required oath.

Sect. 7. If any officer specified in the schedule hereto declines or neglects, when any oath required to be taken by him under this Act is duly tendered, to take such oath, he shall, if he has already entered on his office, vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled, in respect of the same appointment to the same office, to take such oath or make such affirmation more times than one.

Form of oath of

Sect. 8. The form of the oath of allegiance provided by this Act shall

be deemed to be substituted in the case of the "Clerical Subscription Act, 1865," for the form of the oath of allegiance and supremacy therein referred to; in the case of the "Parliamentary Oaths Act, 1866," for the form of the oath thereby prescribed to be taken and subscribed by members of Parliament on taking their seats; and in the case of the "Office and Oaths Act, 1867," for the form of the oaths of allegiance, supremacy, and abjuration therein referred to; and all the provisions of the said Acts shall apply to the oath substituted by this section in the same manner as if that form of oath were actually inserted in each of the said Acts in the place of the oath for which it is substituted.

Sect. 9. No person shall be required or authorized to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oath substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by this Act and the "Clerical Subscription Act, 1865," and the "Parliamentary Oaths Act, 1866," or one of such Acts, any Act of Parliament, charter, or custom to the contrary notwithstanding; and no person shall be required or authorized to take the oath of assurance in Scotland.

The effect of sections 8 and 9 with respect to the oath to be taken under this Act and the "Office and Oaths Act, 1867," seems to be that any person accepting an office, etc., who is not required by this Act, the "Clerical Subscription Act, 1865," or the "Parliamentary Oaths Act, 1866," to take the oath of allegiance, need not take any oath; but if he is required to take the oath of allegiance by any one of the above three Acts, then he must take the oath of allegiance in the form required by this Act, and not in the form required by the "Office and Oaths Act, 1867."

1. *Qualifications for Officers, etc.*

allegiance in this Act substituted for form in certain other Acts.

Prohibition of oath of allegiance except in accordance with Act.

Effect of sects. 8 & 9 of the 31 & 32 Vict. c. 72.

Miscellaneous Provisions as to Oaths.

Sect. 10. Where in any oath under this Act the name of her present Majesty is expressed, the name of the sovereign of this kingdom for the time being shall be substituted from time to time.

The name of the sovereign for the time being to be used in the oath.

Sect. 11. When an oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may, instead of taking such oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God."

Provision in favour of persons permitted to make affirmations.

PART II.

Oaths to be abolished.

(Substitution of Declaration for Oaths.)

Sect. 12. The following regulations shall be enacted with respect to the substitution of declarations for oaths (that is to say);

Regulations as to substitution of declarations for oaths.

1. Where before the passing of this Act an oath was required to be taken by any person on or as a condition of accepting any employment or office in her Majesty's honourable band of gentlemen at arms or body guard of yeomen of the guard, or in any other department of her Majesty's household, in such case a declaration of fidelity in office shall be substituted with the addition (in cases where it seems meet to her Majesty by order in council to make such addition) of a declaration of secrecy to be observed by the declarant with respect to matters coming within his cognizance by reason of his employment or office:

1. *Qualifica-
tion for
Officers, etc.*

2. Where before the passing of this Act an oath was required to be taken by any person on or as a condition of accepting any office in or under a municipal corporation, or on or as a condition of admission to membership in or participation in the privileges of any municipal corporation, there shall be substituted for such oath, in the case of an office, a declaration that the declarant will faithfully perform the duties of his office; and in the case of admission to membership or participation in the privileges of a municipal corporation, a declaration that the declarant will faithfully demean himself as a member of or participator in the privileges of such corporation:
3. Where before the passing of this Act an oath was required to be taken on or as a condition of admission to membership or fellowship or participation in the privileges of any guild, body corporate, society, or company, a declaration to the like effect of such oath shall be substituted; provided that if any two or more of the members of such guild, body corporate, society, or company, with the concurrence of the majority of the members present and voting at a meeting specially summoned for the purpose, object to any statement contained in such declaration on the ground of its relating to duties which by reason of change of circumstances have become obsolete, they may appeal to one of her Majesty's principal secretaries of state to omit such statement, and the decision of such secretary of state shall be final:
4. Where in any case not otherwise provided for by this Act or included within the saving clauses thereof an oath is required to be taken by any person on or as a condition of his accepting any employment or office, a declaration shall be substituted for such oath to the like effect in all respects as such oath:
5. The making a declaration in pursuance of this section instead of oath shall in all respects have the same effect as the taking the oath for which such declaration is substituted would have had if this Act had not passed.

Penalty on not making declaration required by this Act.

Sect. 13. If any person required by this Act to make a declaration instead of an oath declines or neglects to make such declaration, he shall be subject to the same penalties and disabilities, if any, as he would have been subjected to for declining or neglecting to take the oath for which the declaration provided by this Act is substituted.

PART III.

Saving Clause.

Not to affect matters herein stated.

Sect. 14. Nothing in this Act contained shall affect—

1. "The Clerical Subscription Act, 1865," or the "Parliamentary Oaths, 1866," except in relation to the form of oath in manner hereinbefore mentioned:
2. The oath taken by privy councillors of the United Kingdom, or by privy councillors of Ireland, with the exception that the form of the oath of allegiance prescribed by this Act shall be substituted for the oath of allegiance, supremacy, and abjuration now required to be taken by privy councillors:
3. The oath of homage taken by archbishops and bishops in the presence of her Majesty:
4. The oath of canonical obedience to the bishop, or the oath of due obedience to the archbishop, taken by bishops on consecration, and which oaths are reserved by the "Clerical Subscription Act, 1865":

5. Any oath taken by peers, baronets, or knights on their creation, with this exception, that where the oaths of allegiance, supremacy, or abjuration, or any two or one of such oaths, or any oath substituted for such oaths or any of them, are or is required to be taken by such peers, baronets, or knights, there shall be substituted for such oaths, or any two or one of them, the oath of allegiance prescribed by this Act:
6. Any oath required to be taken in the army, the marines, the militia, the yeomanry, or the volunteers:
7. The oath taken by aliens on being naturalized, with this exception, that the form of the oath of allegiance prescribed by this Act shall be substituted for the form of the oath of allegiance required so to be taken by aliens previously to the passing of this Act:
8. The eighteenth section of the "Merchant Shipping Act, 1854," or any provision to be substituted therefor, whereby certain persons claiming to be owners of British ships are required to take the oath of allegiance, with this exception, that the form of the oath of allegiance as prescribed by this Act shall be substituted for the form of the oath of allegiance contained in the said "Merchant Shipping Act, 1854":
9. Any power of substituting a declaration for an oath vested in the commissioners of her Majesty's treasury by the Act of the session of the fifth and sixth years of the reign of his late Majesty King William the fourth, chapter sixty-two:
10. Any oath required or authorized by Act of Parliament to be taken or made for the purpose of attesting any fact or verifying any account or document:
11. Any oath or declaration taken in judicial ratification by married women, as the same by the law and practice of Scotland have been in use to be taken:
12. Any oath required to be taken by any juror, witness, or other person in pursuance of any Act of Parliament or custom as preliminary to or in the course of any civil, military, criminal, or other trial, inquest, or proceedings of a judicial nature, including any arbitration, or as preliminary to or in the course of any proceedings before a committee of either house of Parliament, or before any commissioner or other special tribunal appointed by the crown.

1. *Qualification for Officers, etc.*

Sect. 15. Where a declaration has been substituted for an oath under this Act, any person, guild, body corporate, or society which before the passing of this Act had power to alter such oath, or to substitute another oath in its place, may exercise a like power with regard to such declaration.

Saving of powers of alteration hitherto exercised.

Sect. 16. Where previously to the passing of this Act the taking of any oath formed a condition precedent or subsequent to the attainment by any person of any office, privilege, exemption, or other benefit, and such person is by this Act prevented from fulfilling such condition, he shall nevertheless, on complying with the other conditions, if any, attached to the attainment of such office, privilege, exemption, or other benefit, be entitled thereto in the same manner as if the condition relating to such oath, and any directions as to the certificate or registration of the taking of such oath, or otherwise, had been fulfilled and performed.

General saving as to matters herein stated.

1. *Qualification for Officers, etc.*

SCHEDULE.

FIRST PART.

England.

First Lord of the Treasury.
Chancellor of the Exchequer.
Lord Chancellor.
President of the Council.
Lord Privy Seal.
Secretaries of State.
First Lord of the Admiralty.
Chief Commissioner of Works and Public Buildings.
President of the Board of Trade.
President of the Poor Law Board.
Lord Steward.
Lord Chamberlain.
Lord Marshal.
Master of the Horse.
Commander-in-Chief.
Chancellor of the Duchy of Lancaster.
Paymaster-General.
Postmaster-General.

The oath as to England is to be tendered by the Clerk of the Council, and taken in presence of her Majesty in Council, or otherwise as her Majesty shall direct.

The rest of the schedule relates to Scotland and Ireland.

SECOND PART.

England.

The Lord Chancellor of Great Britain.
The Lord Chief Justice.
The Master of the Rolls.
The Chief Justice of the Common Pleas.
The Chief Baron of the Exchequer.
The Lords Justices of the Court of Appeal in Chancery.
The Vice-Chancellors.
The Puisne Justices of the Queen's Bench.
The Puisne Justices of the Common Pleas.
The Puisne Barons of the Exchequer.
The Judge of the Admiralty Court.
The Recorder of London.
The Judge of the Probate Court.
Justices of the Peace for counties and boroughs.

The rest of the schedule relates to Scotland and Ireland,

Exceptions.
Inferior offices.

By the 1 Geo. 1, st. 2, c. 13, s. 20, persons filling the office of *tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices*, were not required to take the oaths. Which exception is the same with that in the 25 Car. 2, c. 2, s. 17, save only, that *high constables and petty constables*, by name, are here omitted. *Petty constables*, nevertheless, seem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough*: but *high constables* are expressly inserted amongst the other officers required to take the oaths.

Oath must be taken with reference to the particular office.

The oath must be taken with reference to the particular office to be accepted, and it is not sufficient that the oath has been taken on another occasion. (*M'Mahon v. Lennard*, 6 H. of L. Cas. 970.)

And the Court shall enrol such person's names, with the day and time of taking the oath, in rolls kept for that purpose only; which shall be hung up in some public place of such Court during the whole time of its sitting, to be seen without fee. (25 Car. 2, c. 2, s. 6.)

And the clerk of the peace shall have no more than 2s. for the entry. (1 Geo. 1, st. 2, c. 13, s. 9.) But no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee for taking the oaths. (Sect. 31.)

2. *Refusing to Accept, etc.*

Enrolling and fee.

Sacramental Test.—Before the 9 Geo. 4, c. 17, no person could be elected to any municipal office without taking the sacrament, and by that statute a form of declaration was substituted for that rite; but now, by the 29 Vict. c. 22, such rite or declaration is no longer necessary.

Sacramental test.

By the 30 & 31 Vict. c. 62, the declarations against transubstantiation, etc., are done away with.

Transubstantiation, etc.

II. Refusing to Accept, and Neglecting and Misbehaving in Offices.

If a party be duly appointed to execute, and be qualified and liable to execute a public office, he will be guilty of a misdemeanour at common law if, after due notice of the appointment, he refuse to execute it, and may be indicted accordingly, and punished with fine or imprisonment, or both. Thus a person duly chosen and qualified is indictable for refusing to take on himself the office of constable of a parish which he inhabits (*R. v. Harpur*, 5 Mod. 96); or the office of special constable (*R. v. Vincent*, 9 C. & P. 91); or the office of overseer of the poor (*R. v. Jones*, 2 Stra. 1145); or any other ministerial office; but notice of the appointment must be first given him, and the indictment must show the duty he has violated, by setting out the mode in which he was appointed and how he became liable to serve, and his refusal to execute. (See *R. v. Harpur*, 5 Mod. 96; *R. v. Poynder*, 1 B. & Cres. 178. See forms of indictment, tit. "Constable," Vol. I.; and 3 Chit. C. L. Index, tit. "Office.")

Refusing to accept office.

In a recent case it was considered that a fine of £300 for not serving an office is excessive, where the highest previous fine was £100, and was found sufficient to produce an acceptance of the office. (*R. v. Mosley*, 5 Nev. & M. 261.) So, although since the last refusal the office has become more burdensome, and the number of persons qualified to serve has much diminished. (*Id.*)

If a public officer wilfully or grossly neglects the duty of his office, and more particularly where such neglect operates as a hindrance of public justice, he is guilty of a misdemeanour at common law, and may be indicted accordingly, and punished with fine and imprisonment, or both (*R. v. Holland*, 5 T. R. 607). And where a duty is cast on a body of several persons, and all neglect it, each is individually liable to prosecution and punishment. (*Id.*)

Neglecting duty of office.

Thus, a constable is indictable for neglecting to apprehend an offender. (*R. v. Wyatt*, 1 Salk. 381.)

So, an overseer of the poor is indictable for neglect of his duty, as in not providing for the poor (*R. v. Tawney*, 1 Bott. Poor Laws, pl. 371, p. 358, 5th ed.); for refusing to receive a pauper sent under a legal order of removal (*R. v. Davis*, Say. 163); for misusing the poor (*R. v. Wetherill*, Cald. 432; *R. v. Winship*, *Id.* 76); for refusing to render his accounts (*R. v. Commings*, 5 Mod. 179; *R. v. Crossley*, 2 P. & D. 319; see *Reg. v. Crossley*, 10 A. & E. 132); for embezzling or ren-

2. *Refusing to Accept, etc.*

dering false accounts (see *R. v. Martin*, 2 Camp. 269; *Moulsworth's Case*, Comb. 287); for neglecting to make a rate to reimburse constables, under 14 Car. 2, c. 14. (*R. v. Barlow*, 2 Salk. 609.) It seems, indeed, doubtful whether an indictment will lie against an overseer for not relieving a pauper in ordinary cases, when no order has been made for his relief (*R. v. Meredith*, R. & R. C. C. 46); he would, however, be liable to an indictment for not relieving a pauper, in cases of pressing emergency (*R. v. Booth*, R. & R. C. C. 47, n. (a).) If an overseer receive from the reputed father of a bastard child born within the parish, money as a composition for the maintenance of the child, he is liable to an indictment for fraudulently omitting to give credit for this sum in his accounts, although the contract was wholly illegal. (*R. v. Martin*, 2 Camp. 268; and see *ante*, Vol. I. tit. "Bastards.") If overseers conspire to prevail upon a man to marry a pauper big with child in order to throw the expenses of maintenance upon another parish, they may be indicted. (*R. v. Compton*, Cald. 246.) An overseer is not indictable if without fraud or menace he remove a pauper under an order, confirmed on appeal, subject to the opinion of the Queen's Bench and before its final determination. (*Reg. v. Cooper*, 3 Sess. C. 346; 18 L. J., M. C. 16.)

An indictment lies against a coroner for refusing to take, or improperly taking, an inquisition on a dead body. (See tit. "Coroner," Vol. I.)

And generally the proper remedy against a public officer who disobeys an Act of Parliament, the meaning and effect of which is in dispute, is an indictment. (*R. v. Rochester (Mayor)*, 2 Jurist, 64.—Q. B.)

Misconduct, etc.,
and corruption,
etc., of.

There can be no doubt but that all officers, whether such by the common law or made pursuant to statute, are punishable for corruption and oppressive proceedings, according to the nature and heinousness of the offence, either by indictment, attachment, action at the suit of the party injured, loss of their offices, etc. (*Bac. Ab. Office & Officer (N)*.) In the case of a coroner, the 25 Geo. 2, c. 29, s. 6, provides, that when convicted of extortion, or wilful neglect of duty, or misdemeanour in office, he may be removed from office, unless such office be annual or annexed to some other office: and by the 23 & 24 Vict. c. 116, s. 6, the Lord Chancellor may remove a county coroner for inability or misbehaviour in his office.

A contumacious refusal by a clerk of the peace to record an order of the Court of quarter sessions is a misdemeanour under 1 W. & M. c. 21, and the justices may discharge him from his office. (*Wildes v. Russell*, 35 L. J., M. C. 241.)

But besides the punishment by indictment, information, etc., all courts of record have a discretionary power over their own officers, and are to see that no abuses are committed by them which may bring disgrace on the Court themselves. Also the Court of Queen's Bench, by the plenitude of its power, exercises a superintendency over all inferior Courts, and may grant an attachment against the judges of such Courts, for oppressive, unjust, or irregular practice, contrary to the obvious rules of natural justice. (*Bac. Ab. Office & Officer (N)*.)

Churchwardens, rate-collectors, overseers, or other parish officers, refusing to call vestry meetings, and otherwise neglecting to perform certain other duties, are guilty of a misdemeanour under the 1 & 2 Will. 4, c. 60, s. 11.

It has been doubted whether a clergyman who refuses to marry a couple is indictable for such refusal. (See *Reg. v. James*, 2 Den. C. C. 1; 3 C. & K. 167.)

A gaoler, who by too great duress of imprisonment makes a prisoner become an approver, is guilty of felony by the 14 Edw. 3, c. 10. So also a gaoler may be fined for voluntarily suffering his prisoners to escape, or

for misusing them (1 *Hawk. P. C.*, c. 66, s. 2), or for refusing to receive one under commitment. (*R. v. Cope*, 6 *A. & E.* 226.)

If a surveyor be guilty of any embezzlement or breach of duty, he may be indicted. (*R. v. Anderson*, *MS.*)

If a magistrate abuses his authority from corrupt motives, he is punishable criminally by indictment or information. (4 *Bl. Com.* 354, n. (17); and tit. "*Justices*," ante, 144.)

It is sufficient in an indictment against any officer for this offence to aver, that he, *being such*, etc., committed the offence. (*R. v. Hollond*, 5 *T. R.* 623.) And proof that he acted as such would suffice (*Berryman v. Wise*, 4 *T. R.* 366; and see tit. "*Evidence*," Vol. II.; *R. v. Murphy*, 8 *C. & P.* 297; *R. v. Price*, 3 *P. & D.* 421.)

As to the offence of extortion, see tit. "*Extortion*," Vol. II.; and as to the offence of bribery, see tit. "*Bribery*," Vol. I.

As to how far the acceptance of an incompatible office avoids another, see *R. v. Patteson*, 1 *Nev. & M.* 612; 4 *B. & Adol.* 9, *S. C.*; *Bac. Ab. Office & Officer* (K). Accepting incompatible office.

III. Of Buying and Selling Offices.

The buying and selling of offices of a public nature is an offence *malum in se*, and indictable at common law. (*Stockwell v. North, Noy*, 102. And see the cases of *R. v. Pollman and others*, 2 *Camp.* 229; *R. v. Vaughan*, 4 *Burr.* 2494; *Richardson v. Mellish*, 2 *Bingh.* 236, 247; 9 *Moore*, 435, *S. C.*; *Bac. Ab. Office & Officer* (F).) Offence at common law.

By the 12 Ric. 2, c. 2, it is enacted, that the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and of the other, barons of the exchequer, and all others who shall be called to ordain, name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn, that they shall not ordain, name, nor make any of the above-mentioned officers for any manner of gift or brokerage, favour, or affection; nor that none who pursueth by himself, or by other, privily or openly to be in any manner of office, shall be put into the same office, or into any other; but that they shall make all such officers and ministers of the best and most lawful men and sufficient in their knowledge and conscience. (See the *Earl of Maclesfield's Trial*, 16 *Howell's St. Tri.* 767.) Offence by statute 12 Ric. 2, c. 2.

Lord Coke speaks of this as a law worthy to be written in letters of gold, but more worthy to be put in due execution; for certainly never shall justice be duly administered but when the officers and ministers of justice be of such quality, and come to their places in such manner, as by this law is required. (*Co. Lit.* 234.)

By the 4 Hen. 4, c. 5, it is enacted, that no sheriff shall let his bailiwick to farm to any man, for the time that he occupieth such office. Sheriff letting office to farm.

But the principal statute belonging to this matter is the 5 & 6 Edw. 6, c. 16, which enacts, sect. 1, for the avoiding of corruption which may hereafter happen to be in the officers and ministers in those courts, places, or rooms wherein there is requisite to be had the true administration of justice or services of trust; and to the intent that persons worthy and meet to be advanced to the place where justice is to be ministered, or any service of trust executed, should hereafter be preferred to the same, and no other. Offence by 5 & 6 Edw. 6, c. 16.

Sect. 2. If any person or persons at any time hereafter *bargain or sell* an office or offices, or deputation of any office or offices, or any part or Penalty for buying or selling

3. *Buying and Selling Offices.*

some sort of offices.

parcel of any of them, or receive, have, or take any money, fee, reward, or any other *profit*, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward, or other profit, directly or indirectly, for any office or offices, or for the *deputation of any office or offices*, or any part of any of them; or to the intent that any person should have, exercise, or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them, which office or offices, or any part or parcel of them, shall in anywise touch or concern the administration or execution of justice, or the receipt, controlment, or payment of any of the king's highness' treasure, money, rent, *revenue*, account, aulnage, auditorship, or surveying of any of the king's Majesty's honours, castles, manors, lands, tenements, woods, or hereditaments; or any of the king's Majesty's customs, or any other administration or necessary attendance to be had, done, or executed in any of the king's Majesty's custom-house or houses; or the keeping of any of the king's Majesty's towns, castles, or fortresses, being used, occupied, or appointed for a place of strength and defence; or which shall concern or touch any clerkship to be occupied in any manner of *court of record* wherein justice is to be ministered: that then all and every such person and persons that shall so bargain or sell any of the said office or offices, deputation or deputations, or that shall take any money, fee, reward, or profit for any of the said office or offices, deputation or deputations of any of the said offices, or any part of any of them; or that shall take any promise, covenant, bond, or assurance for any money, reward, or profit, to be given for any of the said office or offices, deputation or deputations of any of the said office or offices, or any part of any of them, shall not only *lose and forfeit* all his and their right, interest, and estate, which such person or persons shall then have, of, in, or to any of the said office or offices, deputation or deputations, or any part of any of them, or of, in, or to the gift or nomination of any of the said office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any bargain or sale, or take or receive any sum of money, fee, reward, or profit, or any promise, covenant, or assurance to have or receive any fee, reward, money, or profit: but also, that all and every such person or persons that shall give or pay any sum of money, reward, or fee, or shall make any promise, agreement, bond, or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices, or any part of any of them, shall immediately, by and upon the same fee, money, or reward, given or paid, or upon any such promise, covenant, bond, or agreement, had or made for any fee, sum of money, or reward, to be paid as is aforesaid, be adjudged a *disabled person* in the law, to all intents and purposes, to have, occupy, or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee, or reward, or make any promise, covenant, bond, or other assurance, to give or pay any sum of money, fee, or reward.

The bargains and assurances shall be void.

Sect. 3. All and every such bargains, sales, promises, bonds, agreements, covenants, and assurances, as be before specified, shall be void, to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance shall be had or made.

Act not to extend to office of inheritance, or to office of park-keepers, etc.

Sect. 4 provides, that this Act, or anything therein contained, shall not in anywise extend to any office or offices, whereof any person or persons is or shall be seised of any estate of inheritance; nor to any office of parkership, or of the keeping of any park, house, manor, garden, chase or forest, or to any of them; anything in this Act heretofore mentioned to the contrary thereof in anywise notwithstanding.

Act done by an

Sect. 5. If any person or persons do hereafter offend in anything con-

trary to the tenor and effect of this Act, yet that, notwithstanding all judgments given, and all other act and acts executed or done by any such person or persons so offending, by authority or colour of the office or deputation, which ought to be forfeited, or not occupied, or not enjoyed by the person so offending as is aforesaid, after the said offence so by such person committed or done, and before such person so offending for the same offence be removed from the exercise, administration, and occupation of the said office or deputation, shall be and remain good and sufficient in law to all intents, constructions, and purposes, in such like manner and form as the same should or ought to have remained and been if this Act had never been had or made.

3. *Buying and Selling Offices.*

officer removable shall be good.

Sects. 6 and 7 are repealed by the 26 & 27 Vict. c. 125.

Bargain or sell.—A contract for A. to surrender an office, to the intent that B. may be appointed, is within the Act. (*Co. Lit.* 234; 3 *Inst.* 154, *Sir Arthur Ingram's case*.)

Construction of stat. 5 & 6 Edw. 6, c. 16.

An agreement for the sale of the business of a law-stationer, and to use endeavours to introduce and recommend another to offices in the stamps and taxes, was held to be an agreement for the sale of such offices, and, as such, illegal within the 5 & 6 Edw. 6, c. 16, and the 49 Geo. 3, c. 126. (*Hopkins v. Prescott*, 4 C. B. 578.)

What a bargain or sale.

The contract or agreement must be to receive money or profit, and it must be so alleged in the indictment. (*Samo v. The Queen*, 2 Cox, C. C. 178.)

Or take any Profit, etc.—Where an office is within the statute, and the salary is certain, if the principal make a deputation, reserving a less sum out of the salary, it is good.

What a profit, etc.

So, if the profits be uncertain, arising from fees, if the principal make a deputation, reserving a certain sum out of the fees and profits of the office, it is good; for in these cases the deputy is not to pay unless the profits amount to so much; and though a deputy is, by his constitution, in the place of his principal, yet he has no right to the fees, they still continue to belong to the principal; so that, as to the principal, it is only reserving a part of his own, and giving away the rest to the deputy. But where the agreement is not to pay out of the profits, but to pay generally such a sum, it must be paid at all events, and a bond for such an agreement is void by the statute. (*Gulliford v. De Cardonell*, 2 Salk. 466; *Comb*, 356; *Godolphin v. Tudor*, Id. 468; 6 Mod. 234, S. C.)

Though, in the case of *Bellamy v. Burrow* (Cas. Temp. Talb. 97), it was adjudged that a trust may be created of an office within the statute, yet that doctrine has since been questioned, if not overruled. (*Fordyce v. Willis*, 3 Bro. 585; *Parsons v. Thompson*, 1 H. Bl. 322; *Garforth v. Fearon*, Id. 327; *Layng v. Paine*, Willes, 575.)

A bond, given by an officer mentioned in the 5 & 6 Edw. 6, for securing all the profits of the office to the person appointing, is void by the statute. (*Layng v. Paine*, Willes, 571.)

So is a bond given by such an officer to surrender whenever the person appointing chooses. (*Id.*)

A demise of part of the profits of an office, such as the goods of felons, to a person appointed deputy, rendering a certain rent, is, it seems, within the Act. (*Ellis v. Ruddle*, 2 Lev. 151.) In *Law v. Law* (Cas. Temp. Talb. 140) an injunction was granted against a bond for procuring an office in the customs, the lord chancellor saying, that there was little difference between a commissioner's taking a sum of money, and another person taking it to influence the commissioner. (See *Garforth v. Fearon*, 1 H. Bl. 327.)

Where an attorney held certain offices which were within the statutes, and entered into partnership, and the profits of the offices were to be di-

3. *Buying and Selling Offices.*

What an office.

vided as partnership property, it was held not to be a sale within the statutes. (*Sterry v. Clifton*, 9 C. B. 110.)

Office or Offices.]—The offices of chancellor, registrar, and commissary in the ecclesiastical Courts are within the meaning of the statute; inasmuch as those Courts not only determine matters that are brought before them *pro salute animæ*, but also have the decision of disputes concerning the lawfulness of matrimony and legitimation of children, which touch the inheritance of the subject, and also hold plea of legacies and tithes, and grant probates of wills and letters of administration, etc., in which respect they are Courts of justice. (*Dr. Trevor's case*, 12 Rep. 78; *Oro. Jac.* 269, S. C.; 3 Inst. 148; *Godolphin v. Tudor*, 1 Salk. 468; *Woodward v. Fox*, 3 Lev. 289; 2 Vent. 187, 267, S. C.; *Layng v. Paine, Willes*, 571.)

So also is the place of cofferer; and the Queen is bound by this statute (*Co. Lit.* 234 (a).)

So also is that of the surveyor of the customs. (2 And. 55, 107.)

So also are the offices of the clerk of the crown and clerk of the peace. (*Macarty v. Wickford*, Tr. 9 Geo. 2, B. R.), in error from Ireland, though it was also ruled there that the statute did not extend to that case, Ireland not being within the statute.

An assignment to trustees, of all the emoluments and profits, which, during the life of J. S., and his continuing to hold the office of *clerk of the peace* for Westminster, should arise or become due to him as such clerk of the peace, or in respect of his office, after deducting the salary of his deputy for the time being, upon trust to pay the interest arising on certain debts due from J. S., and from time to time to render the residue, after satisfying the trusts, to J. S., was held invalid in law. (*Palmer v. Bate*, 6 Moore, 28; 2 B. & B. 673, S. C.)

An attorney, town clerk, and clerk of the peace for the borough of D. in the county of L., upon the dissolution of partnership, which had existed between him and two other persons, entered into an agreement to pay to one of them (C. D.) a certain sum of money, and use his endeavours to procure for him one-fourth of the prosecutions arising in the town clerk's office. In an action by C. D. on this agreement, it appeared that the magistrates of the borough of L. commit some offenders to be tried at the borough sessions, others at the county sessions, and others to the county assizes. Held, that the defendant, as the clerk of the peace of the borough, could not legally enter into such an agreement as that set out in the declaration. *Quære*, whether it would have been legal had he been town clerk. A particular provision is made against the sale of the office of clerk of the peace by the 1 W. & M. sess. 1, c. 21, with a proviso, that the act should not extend to the clerk of the peace for the county of Lancaster, who holds his office for life. (*Hughes v. Statham*, 6 D. & R. 219; 4 B. & C. 187, S. C.; *Palmer v. Bate*, 6 Moore, 28; 2 B. & B. 673, S. C.)

So also (it should seem) is the place of a purser of a ship. For though the contrary was decided in 2 Vern. 308, the authority of that case was doubted by Lord Loughborough, in 1 H. Bl. 326. And in *Purdy v. Stacey*, (5 Burr. 2700), Lord Mansfield, in delivering the opinion of the Court, said, "If the commissioners of the Admiralty were to take money for their warrant to appoint a person to be purser, it would be criminal in the corrupter and corrupted." And see as to the commander of an East India Company's ship, *Card v. Hope*, 2 B. & C. 661; 4 D. & R. 164, S. C.; *Blatchford v. Preston*, 8 T. R. 89.

So also is the place of customer of a port. (*Garforth v. Fearon*, 1 H. Bl. 327.)

So also are the offices of collector and supervisor of the excise. (*Law v. Law*, Cas. Temp. Talb. 140; 3 P. Wms. 391.)

An agreement to allow a certain share of the profits of an office in a

dockyard, in order to induce the possessor to procure himself to be superannuated, is void. (*Parsons v. Thompson*, 1 *H. Bl.* 322.)

But the sale of a bailiwick of a hundred is *not* within the statute; such an office not concerning the administration of justice, nor being an office of trust. (*Godbolt's Case*, 4 *Leon*, 33.)

Nor is a seat in the six clerks' office, that being a ministerial office only. (*Sparrow v. Reynold*, P. 26 Car. 2, C. B.)

Nor are commissions in the army. (*Ive v. Ash*, *Pre. Ch.* 199.) But the reason why the sale of these commissions is allowed, is, that it takes place under the authority and with the consent of those who have the power of appointment. (*Garforth v. Fearon*, 1 *H. Bl.* 327; *Blachford v. Preston*, 8 *T. R.* 94.)

The resignation for a sum of money of the position of major in the East India service, is within the statute (*Grame v. Wroughton*, 11 *Ex.* 146), and so was the sale of an East India director's nomination to a cadetship. (*Reg v. Charretie*, 13 *Q. B.* 447.)

And with regard to offices under government, it has been decided that they cannot be sold, though they be not such offices as are mentioned in the statute. (*Blachford v. Preston*, 8 *T. R.* 94.)

But offices not within the statute may be sold, provided the sale takes place with the consent of those who have the power of appointment. (*Blachford v. Preston*, 8 *T. R.* 94.)

As to what is an office relating to the revenue, see *Walldo v. Martin* (4 *B. & C.* 319; 6 *D. & R.* 364, *S. C.*).

But the office of *private secretary* does not fall within the meaning of the 5 & 6 Edw. 6. Therefore an assignment of the profits of all offices which the defendant might acquire, is good as to all those which may be legally assigned. (*Harrington v. Klopogge*, 6 *Moore*, 38 *n. (a)*; *B. & B.* 678, *n.*; 2 *Chit. Rep.* 475, *S. C.*)

Deputation of any Office.]—One Colshill, being surveyor of the customs, agreed with Smyth that the latter should be his deputy, and that, in consideration thereof, Smyth should pay Colshill £600, and £100 annually: it was also agreed that Colshill should surrender his patent, and procure a new one in the joint names of himself and Smyth, and Smyth gave the other a bond for the performance of the whole agreement; it was decided that the bond was void as being within the statute, for though that part of it which respected the procuring of a new patent might not be within the Act, yet that the other part of the agreement was, and that vitiated the whole. (2 *And.* 55.)

What a deputation of an office.

Seised of any Estate of Inheritance.]—The proviso in the statute, that the Act shall not extend to any office of which *any person* is seised of any estate of inheritance, means only offices of which *subjects* are seised of estates of inheritance, and does not extend to those of which the king is so seised. (*Huggins v. Bambridge*, *Willes*, 241.)

Exceptions of statute.

And therefore it was decided, that a contract with the warden of the Fleet (who held only for life under the crown), that for a sum of money he should surrender the office to the king, to the intent that he should procure from the king a grant of the office to the purchaser, was void by this statute; though that office has been and may be granted to a subject in fee; and that a bond given to secure the payment of such consideration could not be enforced in a court of law. (*Id.*)

The bailiwick of the Savoy being an office of inheritance in the crown, granted for life or years, and demised to a sub-lessee, is not within the statute. (*Ellis v. Ruddle*, 2 *Lev.* 151; *Nelson's case*, *Freem.* 428.)

Be adjudged disabled Persons.]—In the construction of this statute, it has been holden, that a person who makes a contract for an office, contrary to the provision of the Act, is so far disabled to hold the same, that he cannot at any time during his life be restored to a capacity of holding

The disability of parties, and avoidance of contracts by the statute.

3. *Buying and Selling Offices.*

Relief in Courts of equity ;

it by any grant or dispensation whatsoever. (*R. v. Bishop of Norwich*, *Hob. 75*; *Co. Lit. 234*; *Fenner v. Nicolson*, *Cro. Car. 61*; *R. v. Bishop of Norwich*, *Cro. Jac. 386*.)

As the provisions of this statute do not extend to all cases within the mischief which it was intended to prevent, it has become necessary for Courts of equity, in many cases, to interpose; for though it be true that penal laws are not to be extended as to penalties and punishments, yet, if there be a public mischief, and a Court of equity see private contracts made to elude laws enacted for the public good, it ought to interpose, and that upon the public policy of the law.

Upon this principle it was that the Court of Chancery interfered in the case of *Morris v. M'Culloch*, where a person, by means of a lady connected with one of the lords of the Admiralty, procured a commission in the marines for a livery servant for £200. (*Amb. 432*.)

So, in *Law v. Law*, where a bond was given to a person to influence a commissioner of excise to appoint to an office under him. (*Cas. Temp. Talb. 140*, and *3 P. Wms. 391*.)

So, in *Hanington v. Du Chatel* (*1 Bro. 124*), where Lord Rochford, groom of the stole to his Majesty, in consideration of two annuities, recommended a page of the presence.

in Courts of law.

Nor is this relief confined to Courts of equity. When cases of a similar nature are brought before the Courts of law, they also refuse to give their assistance to enforce the contract, considering the transaction as contrary to public policy.

In the case of *Parsons v. Thompson*, where the defendant, in consideration that the plaintiff, an officer in the dockyard at Chatham, would procure himself to be superannuated and retire on the usual pension, agreed (without the knowledge of the navy board, to whom the appointment belonged) that in case he, the defendant, should succeed the plaintiff, to allow him a certain share of the annual profits of the office, it was ruled that no action could be supported in a Court of law on such an agreement. (*1 H. Bla. 322*.)

So, in *Garforth v. Fearon* (*1 H. Bla. 327*), where the defendant, by the interest and on the application of the plaintiff, was appointed customer of Carlisle, having previously signed an agreement, declaring that his name was only used in the application in trust for the plaintiff, that he would appoint such deputies as the plaintiff should nominate, and would empower the plaintiff to receive the profits of the office to his own use, it was decided, not only that the agreement was void by the 12 Ric. 2, but also that the common law would not support an *assumpsit* on such an agreement.

Again, in the case of *Blackford v. Preston*, it was holden, that a sale (by the owner) of the command of a ship employed in the East India Company's service, without the knowledge of the company, was illegal; and that the contract of sale could not be the foundation of an action at law. (*8 T. R. 89*.)

At common law, although the bargain respecting an office may not be within the statute, it will be void if it be a fraud on a third person, or contrary to the general policy of the law. Thus, if a covenant is entered into, that if the plaintiff will procure the defendant to be appointed to an office, he will pay the plaintiff a share of the emoluments, and this be without the knowledge of the person who has the right of appointing to the office, it is such a fraud on him as will avoid the covenant, whether the office is one lawfully saleable or not. (*Waldo v. Martin*, *6 D. & R. 364*; *4 B. & C. 319*; *2 C. & P. 1, S. C.*; *Blackford v. Preston*, *8 T. R. 89*; *Card v. Hope*, *4 D. & R. 164*; *2 B. & C. 661, S. C.*; *Richardson v. Mellish*, *2 Bingh. 229*; *9 Moore, 435*; *1 C. & P. 241*.)

Provisions of 5 & 6 Edw. 6, c. 16, extended to other offices by

By the 49 Geo. 3, c. 126, s. 1, reciting the 5 & 6 Edw. 6, c. 16, it is declared and enacted, that the said Act and all the provisions therein contained shall extend and be construed to extend to Scotland and Ire-

land, and to all offices in the gift of the crown, or of any office appointed by the crown, and all commissions, civil, naval, or military, and to all places and employments, and to all deputations to any such offices, commissions, places, or employments, in the respective departments or offices, or under the appointment or superintendence and control of the lord high treasurer or commissioners of the treasury, the secretary of state, the lords commissioners for executing the office of lord high admiral, the master general and principal officers of his Majesty's ordnance, the commander-in-chief, the secretary at war, the paymaster-general of his Majesty's forces, the commissioners for the affairs of India, the commissioners of the excise, the treasurer of the navy, the commissioners of the navy, the commissioners for victualling, the commissioners of transports, the commissary general, the storekeeper general, and also the principal officers of any other public department or office of his Majesty's government in any part of the United Kingdom, or in any of his Majesty's dominions, colonies, or plantations which now belong or may hereafter belong to his Majesty, and also to all offices, commissions, places, and employments belonging to or under the appointment or control of the united company of merchants of England trading to the East Indies, in as full and ample a manner as if the provisions of the said Act were repeated as to all such offices, commissions, places, and employments, and made part of this Act: and the said Act, and this Act, and all the clauses and provisions therein respectively contained, shall be construed as one Act, as if the same had been herein repeated and re-enacted.

3. *Buying and Selling Offices.*

the 49 Geo. 3, c. 126.

As to an office in the colonies, etc., see *Greville v. Attkins*, 9 B. & C. 462.

Sect. 2. Where the right, estate, or interest of any person or persons shall be forfeited under any of the provisions of the said Act or this Act, the right of such appointment shall immediately vest in and belong to his Majesty, his heirs and successors.

When right of appointment forfeited, offices vested in his Majesty.

Sect. 3. If any person or persons shall sell or bargain for the sale of, or receive, have, or take any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any way, device, or means, contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly; and also if any person or persons shall purchase or bargain for the purchase of, or give or pay any money, fee, gratuity, loan of money, reward, or profit, or make or enter into any promise, agreement, covenant, contract, bond, or assurance to give or pay any money, fee, gratuity, loan of money, reward, or profit, or shall by any way, means, or device, contract or agree to give or pay any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, for any office, commission, place, or employment specified or described in the said recited Act or this Act, or within the true intent or meaning of the said Act or this Act, or for any deputation thereto, or for any part, parcel, or participation of the profits thereof, or for any appointment or nomination thereto or resignation thereof, or for the consent or consents, or voice or voices of any person or persons to any such appointment, nomination, or resignation, then, and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a misdemeanour.

Persons buying or selling offices, or receiving or paying money or rewards for offices, guilty of a misdemeanour.

Sect. 4. If any person or persons shall receive, have, or take any money, fee, reward, or profit, directly or indirectly, or take any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, for any interest, solicitation, petition, request, recommendation, or negotiation whatever,

Persons receiving, etc., money for soliciting or obtaining offices, and negotiating same, guilty of misdemeanour.

3 *Buying and Selling Offices.*

made or to be made, or pretended to be made, or under any pretence of making or causing or procuring to be made; any interest, etc., in or about, or in anywise touching, concerning, or relating to any nomination, appointment or deputation to or resignation of any such office, etc., as aforesaid, or under any pretence for using or having used any interest, etc., in or about any such nomination, etc., or for the obtaining or having obtained the consent or consents, or voice or voices of any person or persons as aforesaid to such nomination, etc.; and also if any person or persons shall give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward or profit, or make or cause or procure to be made any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree, or give or pay, or cause or procure to be given or paid any money, etc., for any solicitation, etc., whatever, made or to be made, that shall in anywise touch, concern, or relate to any nomination, etc., of any such office, etc., as aforesaid, or for the obtaining or having obtained, directly or indirectly, the consent or consents, or voice or voices of any person or persons as aforesaid to any such nomination, etc., and also if any person or persons shall, for or in expectation of gain, fee, etc., solicit, recommend, or negotiate in any manner for any person or persons in any matter that shall in anywise touch, concern, or relate to any such nomination, etc., aforesaid, or for the obtaining, directly or indirectly, the consent or consents, or voice or voices of any person or persons to any such nomination, etc., aforesaid, then, and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a misdemeanour.

Persons opening, etc., houses for transacting business relating to sale of offices, guilty of misdemeanour.

Sect. 5. Whereas, on the pretence of negotiating or soliciting the sale, transfer, or appointment of any office or offices, which, under the exception of this Act or otherwise, it may be lawful to sell, offices for negotiating the same and advertisements may be published, by means and under the colour of which illegal transactions intended to be prohibited by this Act may be carried on; it is further enacted, that if any person or persons shall open or keep any house, room, office, or place for the soliciting, transacting, or negotiating in any manner whatever any business relating to vacancies in, or the sale or purchase of, or appointment, nomination, or deputation to, or resignation, transfer, or exchange of any offices, commissions, places or employments whatever in or under any public department, then, and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist therein, shall be deemed and adjudged guilty of a misdemeanour.

Penalty on persons advertising or publishing names of brokers or agents.

Sect. 6. If any person or persons shall advertise or publish, or cause or procure to be advertised, or in any manner published, any house, room, office, or place to have been or to be opened, set up, or kept for any of the purposes aforesaid, or advertise or publish, or cause or procure to be advertised or published, the name or names of any person or persons as broker or brokers, agent or agents, solicitor or solicitors for any of the purposes aforesaid, or print, or cause or procure or permit or suffer to be printed or advertised, any advertisement or advertisements, proposal or proposals, for any of the purposes aforesaid, then, and in such case, such person or persons shall forfeit, for every such offence, the sum of £50 (see *Clarke v. Harvey*, 1 Stark. C. N. P. 92), to be sued for, levied, or recovered in any of his Majesty's Courts of record at Westminster, as to all offences committed in England, or at Dublin, as to offences committed in Ireland, or in his Majesty's Courts in Scotland, as to offences committed in Scotland respectively; and the whole of every such penalty shall go to the person who shall sue for the same, with full costs of suit.

Exception as to purchase or sale

Sect. 7. Nothing in this Act contained shall extend or be construed to

extend to any purchases, sales, or exchanges of any commissions or appointments in the honourable band of gentlemen pensioners, or in his Majesty's yeomen guard, or in the Marshalsea, and the court of the king of the palace of the king at Westminster, or to extend to any purchases, sales, or exchanges of any commissions in his Majesty's forces for such prices as shall be regulated and fixed by any regulation made or to be made by his Majesty in that behalf, or to any act or thing done in relation thereto by any agents, provided that such agents shall be agents of regiments authorized by the commander-in-chief of his Majesty's forces, or by the colonels or commandants of regiments or corps, and shall act therein under such regulations only as are or shall from time to time be established by his Majesty, and shall not cause or procure, or knowingly permit or suffer to be printed or advertised, any advertisement or advertisements, proposal or proposals for any purchase or sale or exchange of any commission, or any negotiation relating thereto, and shall not receive or take any money, fee, gratuity, or reward, or any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree to receive or have any money, fee, gratuity, or reward, for acting in such behalf.

Sect. 8. Every officer in his Majesty's forces who shall take, accept, or receive, or pay, or agree to pay, any larger sum of money, directly or indirectly, than what is allowed by any regulations made by his Majesty in relation to the purchase, sale, or exchange of commissions in his Majesty's forces, or who shall pay, or cause to be paid, any sum of money, to any agent or broker, or other person, for negotiating the purchase or sale or exchange of any such commission, shall, on being convicted thereof by a general court-martial, forfeit his commission and be cashiered; and as an encouragement for the detection of such practices, such commission so forfeited shall be sold, and half the regulated value (not exceeding £500) shall be paid to the informer, and the other half, or the remainder, if more than £500, shall go and be applied as his Majesty shall order and direct, by any regulations from time to time made in that behalf: Provided also, that every person who shall sell his commission in his Majesty's forces, and not continue to hold any commission in his Majesty's forces, and shall, upon or in relation to such sale, take, accept, or receive, directly or indirectly, any money, fee, gratuity, loan of money, reward, or profit, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any device or means contract or agree to receive or have any money, fee, gratuity, loan of money, reward, or profit, beyond the regulated price or value of the commission sold, and also every person who shall wilfully or knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a misdemeanour within the provisions of this Act.

Sect. 9. Nothing in this Act contained shall extend or be construed to extend to any office exempted from the provisions of the said Act passed in the sixth year of the reign of king Edward the sixth, against buying and selling of offices, or to any office which was legally saleable before the passing of this Act, and in the gift of any person by virtue of any office of which such person is or shall be possessed under any patent or appointment for his life; or to render invalid, or in any manner to affect any promise, agreement, covenant, contract, bond, assurance, or trust, entered into or declared before the passing of this Act, and which, before the passing thereof, was a valid promise, agreement, covenant, contract, bond, assurance, or trust, in law or equity, or to any money paid, or to any act, matter or thing done in pursuance of any such promise, agreement, covenant, contract, bond, or assurance.

Sect. 10. Nothing in this Act contained shall extend, or be construed to extend, to prevent or make void any deputation to any office, in any case in which it is lawful to appoint a deputy, or any agreement, contract,

3. *Buying and Selling Offices.*

of certain offices in the palace, or commissions in army at regulated prices, and authorized regimental agents acting without fee.

Officers in army giving more than regulated prices, or paying agents for negotiating, shall forfeit their commissions, and be cashiered; their commissions be sold; half of produce (not exceeding £500) to the informer, etc.

Exception as to offices excepted in former Act, and offices legally saleable, etc.

Saving of lawful deputations and payments out of the fees.

Orders of Justices.

bond, or assurance, lawfully made in respect of any allowance, salary, or payment, made or agreed to be made, by or to such principal or deputy respectively, out of the fees or profits of such office.

Exception as to annual payments out of the fees, to any person formerly holding the office.

Sect. 11. Nothing in the said Act, or in this Act, contained, shall extend to any annual reservation, charge, or payment made or required to be made out of the fees, perquisites, or profits of any office, to any person who shall have held such office, in any commission or appointment of any person succeeding to such office, or to any agreement, contract, bond, or other assurance made for securing such reservation, charge, or payment: Provided always, that the amount of such reservation, charge, or payment, and the circumstances and reasons under which the same shall have been permitted, shall be stated in the commission, patent, warrant, or instrument of appointment of the person so succeeding to and holding such office, and paying or securing such money as aforesaid.

Ireland.

Sect. 12 relates to certain offices in Ireland.

Scotland.

And sect. 13, to the manner of punishing offenders in Scotland.

Offences committed abroad shall be tried in King's Bench.

Sect. 14. All offences committed against the provisions of the said recited Act, and this Act, by any governor, lieutenant-governor, or person having the chief command, civil or military, in any of his Majesty's dominions, colonies, or plantations, or his or their secretary or secretaries, may and shall be prosecuted and inquired of and heard and determined in his Majesty's Court of King's Bench at Westminster, in like manner as any crime, offence, or misdemeanour committed by any person holding a public employment abroad may be prosecuted and inquired of under the provisions of an Act passed in the forty-second year of the reign of his present Majesty, intituled "An Act for the trying and punishing in Great Britain Persons holding public Employments for Offences committed abroad; and for extending the Provisions of an Act passed in the Twenty-first Year of the Reign of King James, made for the Ease of Justice and others in pleading in Suits brought against them, to all Persons either in or out of this Kingdom, authorized to commit to safe Custody."

Orders of Justices.

Jurisdiction of justices to make.

Justices have in a variety of instances express jurisdiction given them by statute to make orders. Various instances will be found in this work under tits. "*Bastards*," "*Distress for Rent*," "*Friendly Societies*," "*Highways*," "*Landlord and Tenant*," "*Lunatics*," "*Poor*," "*Tithes*."

These orders are authorized to be made sometimes out of sessions, sometimes in petty sessions, and sometimes in quarter sessions.

Summons to appear to.

In some instances the order may be made *ex parte*, as in the case of binding out a poor child as a parish apprentice, but this is very rare.

Distinction between orders and convictions (a).

It is not easy to fix any rule for distinguishing, in the abstract, between what things are the subject of orders of justices, and what of convictions by them.

(a) See *Paley on Convictions*, p. 99, 2nd edit.

Before the statute of 4 Geo. 2 convictions were always recorded in Latin, whereas orders were returned in English; and we find this circumstance referred to as a criterion used by the Court in determining that a particular instrument, viz. a judgment of removal of a clerk of the peace by the justices in sessions should be considered as an order, and not as a conviction, and, consequently, as not requiring the evidence to be set out. (*R. v. Lloyd*, 2 Str. 996.)

Perhaps the only criterion that can be furnished for distinguishing when penal proceedings are to be considered as orders and when as convictions is that alluded to by Lord Hardwicke in *R. v. Bissex* (*Sayer*, 304), viz. whether they be so denominated by the statute which gives the justice or justices jurisdiction to make them.

It seems now settled that there is no material distinction between the mode of construing an order and a conviction, whatever favourable intendment may be made in support of the former, when once the essential point of jurisdiction is established. (See *per Cur.* in *Rex v. Marquis of Downshire*, 6 N. & M. 105; *Day v. King*, 5 Ad. & El. 367; *R. v. Radnorshire JJ.*, *ex parte Morgan*, 9 Dowl. 90; 4 Jurist, 916; *R. v. Hulcott*, 6 T. R. 583)

No difference in
construction.

It must expressly appear on the face of the order that the justices had jurisdiction to make it; and the facts raising such jurisdiction should be shown, or it will be bad. (See instances of orders in the case of tenants fraudulently secreting goods to avoid a distress, *R. v. Davis*, 5 B. & Adol. 551; *R. v. Radnorshire*, 9 Dowl. 90; tit. "Distress," Vol. I. 286. Also an instance in the case of orders in disputes between friendly societies and their members, *Day v. King*, 5 Ad. & El. 359, tit. "Friendly Societies," Vol. II.; *R. v. Soper*, 3 B. & Cres. 857; 5 D. & Ry. 669. Also an instance in the case of an order for stopping up a way, *R. v. Marquis of Downshire*, 6 N. & M. 92; 4 Ad. & El. 698, S. C., tit. "Highways in General," Vol. II.)

Form o .

The order must also state that the party against whom it was made was duly summoned to answer the charge, or that he was present at the hearing, unless the statute allow the order to be made *ex parte*. (See "Conviction," Vol. I.)

The charge should, it would seem, be stated with the same degree of certainty and precision as in a conviction. But in *R. v. Middlehurst*, 1 Burr. 399, an objection to an order that the offence was charged in the alternative, viz. for removing or concealing the goods, was overruled expressly upon the ground that this was an order, and not a conviction. It may be doubtful, however, whether this decision would now hold good.

The hearing and adjudication must be stated. (See "Conviction," Vol. I.)

The result only of the evidence need be stated, though this is otherwise in a conviction. (*R. v. Justices of Cheshire*, 5 B. & Ad. 439; 2 Nev. & M. 827, S. C.)

Forms of orders are given in the schedules to the 11 & 12 Vict. c. 43. See also sect. 17 of that Act.

The order must be in writing. In *R. v. Maulden* (1 M. & R. M. C. 382), decided before the introduction of the new bastardy laws, Bayley, J., observed, "Is there any instance of a verbal order of maintenance?" An order of commitment must be in writing. (See "Commitment," Vol. I.)

Must be in writ-
ing.

An order may be good in part, and bad for the residue. (*R. v. Maulden*, 1 M. & R. M. C. 385; *R. v. Winster*, 19 L. J., M. C. 185; 14 Q. B. 344, S. C.; *R. v. Stoke Bliss*, 6 Q. B. 158; *R. v. Green*, 20 L. J., M. C. 168; and see *R. v. Over*, 14 Q. B. 425; *R. v. All Saints*, Newcastle, 1 G. & D. 133.)

Good in part.

Orders of Justices.

Amendment enforcing the order.

An order may be amended under the 12 & 13 Vict. c. 45, s. 7, where it appears that the order might have been drawn up free from omission or mistake. (See *Reg. v. Hellingley, El. & El.* 749; 28 *L. J., M. C.* 167.)

By 12 & 13 Vict. c. 45, s. 18, in all cases where any order shall be made by Court of any general or quarter sessions of the peace, it shall be lawful for the Court of Queen's Bench, or for any judge of that Court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the Court of general or quarter sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order.

In ordinary cases of justices out of sessions, the remedy for disobeying orders made by them is by distress or commitment. (See 11 & 12 Vict. c. 43, s. 19, and tit. "*Commitment*," *Vol. I.*, and tit. "*Warrant*," *Vol. V.*)

No *certiorari* is necessary to remove the order under the above recited section. (*Hawker v. Field*, 20 *L. J., M. C.* 41.)

This Act only applies to cases where the only remedy was by indictment. So an order for the abatement of a nuisance has been held not to be within the Act, for it can be enforced in due course by the sheriff. (*R. v. Bateman*, 27 *L. J., M. C.* 95.)

When the order is removed, the party against whom it is made may apply to try the validity of the order itself. (*R. v. Helier*, 17 *Q. B.* 229; 21 *L. J., M. C.* 3.)

Proof and effect of order.

We have already considered the proof and effect of an order, and how far it protects justices, etc., tit. "*Evidence*," *Vol. II.*

Appeal.

As to appealing against orders, see tit. "*Appeal*," *Vol. I.*

Certiorari.

As to the removal of, by *certiorari*, see "*Certiorari*," *Vol. I.*

Returning to sessions in.

The order, when necessarily drawn up as such, as it must be under some Acts of Parliament, cannot be, like a conviction, returned to the sessions in a more formal or different shape to that in which it was originally drawn up. The moment the justices have put their hands and seals to it as an order, their right or power to alter it ceases. (See *R. v. Justices of Cheshire*, 5 *B. & Adol.* 439; 2 *Nev. & M.* 827, *S. C.*)

Disobedience of orders.

Disobedience of Orders.—The neglect or refusal to obey an order of justices, commissioners, etc., concerning a matter over which they have jurisdiction, after the order has been personally served on the party required by the order to do the act, is an offence indictable at common law as a misdemeanour, notwithstanding a specific penalty is provided by the statute for the neglect of that duty which the order is intended to enforce. (*R. v. Robinson*, 2 *Burr.* 799; *R. v. Harris*, 4 *T. R.* 205; *R. v. Kingston*, 8 *East*, 41; *R. v. Fearnley*, 1 *T. R.* 316; *R. v. Hollis*, 2 *Stark.* 536.) And it is no defence to a party for total disobedience of an order, that when the order was served upon him he was not able to perform its requisitions with so much facility as if he had been sooner ordered to perform what was required of him, for he is bound to obey the order as much as lies in his power, and is not justified in utterly disregarding it. (*R. v. Gash*, 1 *Stark. C. N. P.* 441.) And an indictment lies against the presidents and stewards of a friendly society for disobeying an order addressed to them to readmit a member, though it be sworn that the power of doing so is not in the presidents and stewards, but in a committee. (*R. v. Wade*, 1 *B. & Adol.* 861.) An indictment, charging a contempt by six persons, of an order which was only stated to be

served on four of them, was holden bad on demurrer. (*R. v. Kingston*, 8 *East*, 41. And see *Cald.* 554.)

Pardon.

It must appear, on the face of the indictment, that the order disobeyed was a legal order, and such previous orders as are the foundation of the magistrates' authority must be recited, or at least referred to in an indictment for disobedience of such authority. (*Cald.* 183; *R. v. Wade*, 1 *B. & Adol.* 861; *R. v. Hollis*, 2 *Stark.* 536.) But if there be a positive averment of disobedience to the order of a Court of competent jurisdiction, the indictment will be good without a direct allegation of that which is the foundation of such jurisdiction, nor can a defendant otherwise avail himself, either at the trial or elsewhere, but by showing a want of jurisdiction in the Court. (*Cald.* 536.) Where the order is founded on a conviction, the indictment need not set forth the conviction at length. (*Reg. v. Wyatt*, 2 *Ld. Raym.* 1196.) It should state that the order was positively made, and not set it forth by way of recital. (*R. v. Crowhurst*, *Id.* 1363.) It seems safest to state that the defendant was requested to comply with the terms of the order. (*R. v. Fearnley*, 1 *T. R.* 316.) In orders, not in the nature of convictions, no statement need be made that the evidence was upon oath. Thus, a warrant of distress for a poor rate need not contain such statement (*Ormerod v. Chadwick*, 16 *M. & W.* 367), nor an order for payment of a chapel rate. (*Ramsbottom v. Duckworth*, 1 *Exch.* 506; 19 *L. J.*, *M. C.* 75.)

Indictment for.

Where an indictment for disobeying an order appears to be founded on an order made in a case in which the justices had no jurisdiction, the Court will direct an acquittal at the sittings, although the defect appear on the record. (*R. v. Hollis*, 2 *Stark.* 536. See *R. v. Wade*, *supra*.)

On the trial of an indictment for this offence, the Court will not enter into the merits of the original case, nor into formal objections which do not appear on the order itself, for it would be absurd that a party should, by a contempt, procure a revision of the judgment of a competent tribunal. (*R. v. Mitton*, 3 *Esp.* 200, *n.*; but see now *R. v. Hellier*, *ante*, 1110.)

Trial.

The punishment for this offence is fine or imprisonment, or both, in the discretion of the Court.

Punishment.

The statute empowering the justices to make the order frequently imposes a penalty on summary conviction for its disobedience.

The 33 *Geo.* 3, c. 55, s. 1, gives power to two justices, at petty sessions, to punish constables and peace and parish officers in a summary manner for disobedience of orders and other misconduct. (See "*Constable*," *Vol. I.*)

See a precedent of an indictment for disobeying an order on a friendly society, *ante*, "*Friendly Society*," *Vol. II.*; *R. v. Wade*, 1 *B. & Adol.* 861; and see forms, 2 *Chit. C. L.* 279-291; *Talf. Dick. Sess.* 304. See form of indictment against the treasurer of a county for refusing to obey magistrate's order to pay a constable the expenses of apprehending, etc., a deserter. (*R. v. Pierce*, 3 *M. & Sel.* 62.)

Forms.

Pardon (a).

A pardon is a work of mercy, whereby the Queen, either before the attainder, sentence, or conviction, or after, forgiveth any crime, offence,

What.

(a) As to pardons in general, see 1 *Chit. C. L.* 762 to 777, where the law relative thereto is very fully

considered; and see 3 *Inst.* 233 to 240; 2 *Hawk.* c. 37; *Com. Dig. Pardon*.

Pardon. punishment, execution, right, title, debt, or duty, temporal or ecclesiastical. (3 *Inst.* 233.)

Granted by Queen.

The power of pardoning offences is inseparably incident to, and is the most amiable prerogative of, the crown; and this high prerogative the Queen is entrusted with upon a special confidence that she will spare those only whose case (could it have been foreseen) the law itself may be presumed willing to have been excepted out of its general rules; which the wisdom of man cannot possibly make so perfect as to suit every particular case. (*R. v. Parsons*, 1 *Show.* 284, 3rd ed.)

General pardon.

Pardons are either *general* or *special*: *general*, are by Act of Parliament; of which, if they are without exceptions, the Court must take notice *ex officio*: but if there are exceptions therein, the party must aver that he is none of the persons excepted. (3 *Inst.* 233; *Hale's Sum.* 252.)

Special pardon.

Special pardons are either of *course*, as by divers statutes to those who shall discover their accomplices in several felonies; or of *grace*, which are by the Queen's charter, of which the Court cannot take notice *ex officio*, but they must be pleaded. (3 *Inst.* 233.)

What pardonable.

As to what offences are pardonable in general, see 1 *Chit. C. L.* 672.

Offence before committed.

The Queen cannot pardon an offence before it be committed; and such pardon is void. (2 *Hawk. c.* 37, s. 28.)

Nuisances.

And in some cases, even where the Queen is sole party, some things there are which she cannot pardon: as, for example, for all common nuisances, as for not repairing bridges or highways, the suit (for avoiding a multiplicity of suits) is given to the Queen only for redress and reformation thereof; but the Queen cannot pardon or discharge either the nuisance, or the suit for the same; because such pardon would take away the only means of compelling a redress of it. But it hath been holden by some, that a pardon of such offence will save the party from any fine for the time precedent to the pardon. (3 *Inst.* 237; 2 *Hawk. c.* 37, s. 33.)

Fines.

And surely, a fine being a mulct to the Queen, and not a forfeiture to the party grieved, may be by the Queen remitted.

Impeachment.

By the Act of Settlement, 12 & 13 Will. 3, c. 2, no pardon, under the great seal of England, shall be pleadable to an impeachment by the Commons in Parliament. But it seems, after the impeachment solemnly heard and determined, the royal grace is not farther restrained or abridged; for that to pardon delinquents convicted on impeachment is as ancient as the constitution. (4 *Bl. Com.* 400, n. 2.)

But in the case of an impeachment, after the Lords have delivered their sentence of guilty, the Commons can pardon the party by declining to demand judgment against him; for no judgment can be pronounced by the Lords till it be demanded by the Commons. (4 *Bl. Com.* 400, n. 2.)

Recognizance.

Thus also, if one be bound by recognizance to the Queen to keep the peace against another by name, and generally all other lieges of the Queen, in this case, before the peace be broken, the Queen cannot pardon or release the recognizance, although it may be made only to her, because it is for the benefit and safety of her subjects. (1 *Inst.* 238.)

Queen's sign-manual to pardon not requisite.

A pardon could not formerly be pleaded, unless it were by Act of Parliament or under the great seal; and the Queen's warrant under the sign-manual was not pleadable, as was held in the case of *R. v. Beaton*, 1 *Bl. Rep.* 479; *Lord Warwick's case*, 13 *How. State Trials*, 1015; *Rea*

v. Gully, 1 *Leach*, 98; *Bull v. Tilt*, 1 *B. & P.* 199; and see *Bullock v. Dodds*, 2 *B. & Ald.* 258.

Pardon.

But now by 7 & 8 Geo. 4, c. 28, s. 13, where the king's Majesty shall be pleased to extend his royal mercy to any offender convicted of any felony, punishable with death or otherwise, and by warrant under his royal sign-manual, countersigned by one of his principal secretaries of state, shall grant to such offender either a free or a conditional pardon; the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender, as to the felony for which such pardon shall be so granted.

Provided always, that *no free pardon*, nor any such discharge in consequence thereof, *nor any conditional pardon*, nor the performance of the condition thereof in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction, for any felony committed after the granting of any such pardon.

The 9 Geo. 4, c. 32, s. 3, reciting, it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged; enacts, that where any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal, as to the felony whereof the offender was so convicted: Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other felony.

Punishment for felony, after endured, to have effect of pardon under great seal.

By the 27 Edw. 3, c. 2, in every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprised; and, if it be found untrue, the charter shall be disallowed.

Pardon to contain the suggestion.

For, wherever it may reasonably be presumed that the Queen was deceived, the pardon is void. Therefore, any suppression of truth or suggestion of falsehood in a charter of pardon will vitiate the whole. (2 *Hawk.* c. 37, s. 12; 3 *Inst.* 238.)

And, by the 13 Rich. 2, st. 2, c. 1, no charter of pardon shall be allowed for murder, treason, or rape, unless the offence be specified therein.

Pardon to specify the offence, if murder, treason, or rape.

Lord Coke says, the intention of this Act was not that the Queen should grant a pardon of murder by express name in the charter, but because the whole Parliament conceived that she would never pardon murder by special name. And he says, he hath never seen any pardon of murder by any Queen of England by express name. (2 *Inst.* 233, 236.)

It was, however, determined in the Court of Queen's Bench, that the Queen may pardon on an indictment for murder, as well as a subject may discharge an appeal. (*R. v. Parsons*, 2 *Salk.* 499.)

By the 5 Will. 3, c. 13, when a pardon is pleaded by any one for felony, the justices may at their discretion remand him to prison till he enter into recognizance, with two sureties, for his good behaviour, for any time not exceeding seven years.

Person pardoned may be bound to good behaviour.

It seems to be a settled rule that no pardon by the Queen, without express words of restitution, shall divest either from the Queen or subject an interest either in lands or goods vested in them by an attainder or conviction precedent; yet it seems agreed, that a pardon prior to a con-

Pardon doth not restore lands or goods forfeited.

Parliament. viction shall prevent any forfeiture either of lands or goods. (2 Hawk. c. 35, s. 54.)

The 26th section of the 5 Geo. 4, c. 84, protects felons who have received a remission of their sentences, in the enjoyment of all property acquired by them since their conviction, and not merely such property as has been acquired by their own industry. (*Gough v. Davies*, 2 Kay & J. 623; 25 L. J., Ch. 677.) Therefore, where a convicted felon who had received a conditional free pardon, became entitled as one of the next of kin of a testator to a share in personal property: it was held, that he was entitled to hold it against the crown. (*Ib.*)

Doth not restore the corruption of blood.

A pardon after the attainder doth not restore the corruption of blood; for this cannot be restored but by Act of Parliament. (3 Inst. 233.)

But, as to issue born after the pardon, it hath the effect of the restitution of blood. (1 Hale, 358.)

Doth restore the credit.

May sue for calling him a felon.

It seems to be settled at this day, that the pardon of treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other consequences of his crime, that he may have an action for a scandal in calling him traitor or felon after the time of the pardon. He might also, even before the 6 & 7 Vict. c. 85, be a good witness, notwithstanding the attainder or conviction. The pardon makes him, as it were, a new man, and gives him a new capacity and credit. (2 Hawk. c. 37, s. 48.) But it seems to have been the better opinion that the pardon of a conviction of *perjury* did not so restore the party to his credit as to make him a good witness; because it would be an injury to the people in general to make them subject to such a person's testimony. (*Anon.* 1 Vent. 349.) By the 6 & 7 Vict. c. 85, however, witnesses are no longer to be excluded from giving evidence by reason of incapacity from having committed any crime. (See "*Evidence*," Vol. II.)

At what time, and how pleadable.

A pardon may be pleaded in bar to the indictment; or, after verdict, in arrest of judgment; or, after judgment, in bar of execution. But it must be observed, that it is necessary to plead it at the first opportunity the defendant may have of so doing; if, for instance, he have obtained a pardon before arraignment, and, instead of pleading it in bar, he plead the general issue, he shall be deemed to have waived the benefit of it, and cannot afterwards avail himself of it in arrest of judgment. (*R. v. Norris*, 1 Rol. Rep. 297.) What has now been mentioned, however, relates to the Queen's pardon only; for a statute pardon need not be pleaded (*Fost.* 43; *Standf.* 103 a; 3 Inst. 234; *Plowd.* 83, 84), unless there be exceptions in it (2 Hale, 252; 3 Inst. 334); nor can the defendant lose the benefit of it by his own laches or negligence. (*Jervis, Arch. C. L.* 9th ed. 92.)

See a plea of promise of pardon, *Rex v. Garside*, 2 Ad. & El. 272.

Parliament (a).

The great and important changes in the law of election and the system of representation, effected by the "Reform Act" (2 Will. 4, c. 45) and

(a) For a fuller and more complete treatise on this subject, see *Rogers on Elections and Registration*.

subsequent statutes, might seem to require a more extensive consideration than our present limits can afford. It has however been deemed sufficient for the general utility of this work, to endeavour briefly but practically to explain the law upon this subject as it affects overseers and other local officers. For which purpose copious extracts from the various Acts of Parliament now in force, together with the latest decisions on cases which have arisen thereupon, have been given.

To afford a greater facility of reference, the subject has been divided into the following heads; viz. :—

1. *Registration of Electors for Counties, etc.*

I. *Registration of Electors for Counties, and Duties of Overseers, etc., therein*, p. 1115.

II. *The like, for Cities and Boroughs*, p. 1121.

III. *Publication of Notices, Lists, Registers, etc.*, p. 1129.

IV. *Appointment and Duties of Barristers for revising Lists, etc.*, p. 1130.

V. *Proceedings prior to and at the Election of Members for Counties*, p. 1140.

VI. *The like, for Cities and Boroughs*, p. 1153.

VII. *Other General Matters previous to an Election*, p. 1157.

VIII. *Bribery, Treating, and Intimidation*, p. 1161.

IX. *Schedules and General Forms*, p. 1168.

I. *Registration of Electors for Counties, and Duties of Overseers, etc., therein.*

By the 6 Vict. c. 18, so much of the "Reform Act" as relates to registration is repealed, and by sect. 3, the clerk of the peace for every county (a) shall cause a sufficient number of forms of precepts, notices, and lists to be printed, according to the respective forms numbered (1, 2, 3, 6) in the schedule (A.) and of the table numbered (1) in the schedule (D.) to this Act annexed, and shall also, on or before the tenth day of June in every year, make and cause to be delivered to the overseers of the poor of every parish and township within his county this precept, according to the form numbered (1) in the said schedule (A.), together with a sufficient number of the said printed forms of notices and lists, and of the copies of such part of the register of voters then in force for such county as shall relate to such parish or township respectively, and of the said table, for the purposes hereinafter mentioned.

By the 28 & 29 Vict. c. 36, s. 2, the clerk of the peace shall, on or before the 10th day of June in every year, make and cause to be delivered to the overseers of the poor of every parish and township within his county his precept according to the form No. 1 in schedule (A.) to this Act, instead of the precept numbered 1 in schedule (A.) to the principal Act (c) together with the forms of notices, lists, and copies of register in the principal Act (c) mentioned.

6 Vict. c. 18, repealing the Reform Act as to registration of electors.

Clerk of the peace to have forms of precepts, etc., printed.

Clerk of the peace to issue his precepts, with forms of notices, etc., to overseers (b).

Clerk of peace to deliver precept to overseers of poor on or before 10th June in every year.

(a) Or person executing that office.
(See sect. 101.)

(b) See, as to places having no overseers, sect. 22, *post*.

(c) *i. e.* 6 Vict. c. 18.

1. *Registration of Electors for Counties, etc.*

Overseers to give notice annually, requiring voters to send in their claims.

By the 6 Vict. c. 18, s. 4, the overseers of the poor (*a*) of every parish and township shall, on or before the twentieth day of June in every year, publish a notice, according to the form numbered (2) in the schedule (A.), having first signed the same, requiring all persons entitled to vote in the election of a knight or knights of the shire to serve in Parliament in respect of any property situate wholly or in part within such parish or township, who shall not be upon the register of voters then in force, and also all persons so entitled as aforesaid, who being upon such register shall not retain the same qualification (*b*) or continue in the same place of abode as described in such register (*c*), and who are desirous to have their names inserted in the register about to be made, to give or send to the said overseers, on or before the twentieth day of July then next ensuing, a notice in writing, by them signed, of their claim to vote as aforesaid; and every such person, and any person who being upon such

(*a*) The words "overseers of the poor" are explained in sect. 101, *post*.

(*b*) If the qualification be changed, a new claim is necessary, although the description of the new qualification be in every respect the same as the old. (*Burton v. Gery*, 5 C. B. 7.)

(*c*) By the 28 & 29 Vict. c. 36, s. 10, any person whose name appears on the list of voters then in force, and whose then place of abode is not correctly stated in the said list, or who shall have received a notice of objection grounded on the second column of the list, and who shall have possessed on the last day of July the same qualification in respect of which his name has been inserted on the list, may, if he think fit, make and subscribe a declaration before any justice of the peace, or any commissioner or other person authorized to administer oaths in any of her Majesty's superior Courts at Westminster, in the form contained in schedule (B.) to this Act, or to the like effect; and all such declarations shall be duly dated, and shall, on or before the 14th day of September, be transmitted to the clerk of the peace; and it shall be the duty of the clerk of the peace to endorse on every such declaration the name of the polling district, and of the parish or township in which the qualification to which the declaration relates is situate, and the name of the person making the declaration, and also the date on which he has received the same, and to affix his initials to such last-mentioned endorsement, and to deliver all such declarations to the revising barrister at his first Court, arranged under the heads of the several polling districts according to the alphabetical order of the parishes and townships; and every revising barrister shall, for the purpose of correcting the state-

ment in the list of the place of abode of such person, receive any such declaration as evidence, to be used in Court at the proper time, if transmitted to the clerk of the peace on or before such last-mentioned day, of which the endorsement in that behalf by the clerk of the peace shall be *prima facie* proof, and if purporting to be subscribed before a justice of the peace, or commissioner, or other person authorized as aforesaid, without proof of the signature of the person subscribing the same, or of the justice, commissioner, or person before whom the same purports to have been subscribed, unless he shall have good reason to doubt the genuineness of any signature thereto; and all such declarations may be perused by any person at the office of the clerk of the peace, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, before the 20th day of September; and the clerk of the peace shall deliver copies of any such declaration to all persons applying for the same, on payment of the price of fourpence per folio of seventy-two words.

By sect. 11, any person falsely or fraudulently signing any such declaration in the name of any other person, whether such person shall be living or dead, and every person transmitting as genuine any false or falsified declaration, knowing the same to be false or falsified, and any person knowingly and wilfully making any false statement of fact in such declaration, shall be guilty of a misdemeanour, and punishable by fine or imprisonment for a term not exceeding one year, and the revising barrister shall have power to impound any such declaration.

register may be desirous to make a new claim, shall, on or before the said twentieth day of July, deliver or send to the said overseers a notice signed by him of his claim, according to the form of notice set forth in that behalf in the said form numbered (2), or to the like effect.

By the 28 & 29 Vict. c. 36, s. 3, the clerk of the peace of every county shall, together with the precept, transmit to the overseers of every parish or township within such county a sufficient number of copies of the part or parts of the register relating to such parish or township; and the overseers of the poor of every parish and township shall, on or before the twentieth day of June in every year, and at the same time with the publication of the notice mentioned in the fourth section of the principal Act (a), publish a copy of the register then in force relating to their parish or township, and shall remove the same after a period including two Sundays at least, and not later than the twentieth day of July.

By the 6 Vict. c. 18, s. 5, the overseers of the poor of every parish and township respectively shall on or before the last day of July in every year make out, according to the form numbered (3.) in the said schedule (A.), an alphabetical list of all persons who on or before the twentieth day of July then next preceding shall have claimed as aforesaid; and in every such list the christian name and surname of every claimant, with the place of his abode, the nature of his qualification, and the local or other description of the property, and the name of the occupying tenant thereof, shall be written as the same are stated in the claim (b); and the said overseer, if they shall have reasonable cause to believe that any person whose name shall appear in such list of claimants, or in the copy of the register relating to their parish or township, and received by them from the clerk of the peace, is not entitled (c) to have his name upon the register then next to be made, shall add the word "objected" before the name of every such person on the margin of such list of claimants or the said copy of register; and the said overseers shall also add the word "dead" before the name of any person in the said copy of the register whom they shall have reasonable cause to believe to be dead; and the overseers shall cause a sufficient number of copies of such list of claimants, and of the said copy of the register, with all such marginal additions as aforesaid, to be written or printed, and shall on or before the first day of August sign and publish the same; and the said overseers shall likewise

1. *Registration of Electors for Counties, etc.*

Overseers to publish register.

Overseers to prepare lists of claimants.

Overseers empowered to object to any name:

to add the word "dead" against any name; to publish copies of lists of claimants, and of the part of the register of voters relating to their own parish:

(a) The 6 Vict. c. 18.

(b) If the claim is not signed, it would seem that the overseers may insert the claimant's name in or omit it from the alphabetical list as they please. (*Davies v. Hopkins*, 27 L. J., C. P. 6; 3 C. B. N. S. 376.)

(c) The following persons are entitled to vote in county elections:—

1. Persons seised of an estate of inheritance (*i. e.* in fee simple or fee tail) of freehold tenure of the value of 40s. per annum.

2. Persons seised of an estate for life or lives of freehold tenure of the value of 40s. but under the value of £5 per annum, who

a, actually and *bonâ fide* occupy the premises, or

b, were seised of such estate on the passing of the 2 Will. 4, c. 45 (17 June, 1832), or

c, having acquired such estate after

that day, have acquired it by marriage, marriage settlement, devise, or promotion to a benefice or office.

3. Persons seised of an estate for life or lives of any tenure whatever of the value of £5 by the year.

4. Persons possessed of chattel interests in land or tenements, including:—

a, Lessees (and their assignees) for a term originally created for not less than sixty years, of the value of £5 per annum.

b, Lessees (and their assignees) for a term originally created for not less than twenty years, of the value of £50 per annum.

c, Sub-lessees of the above, provided they be in actual occupation of the premises.

d, Yearly occupiers of lands rated at not less than £12 per annum.

1. Registration of Electors for Counties, etc.

to keep copies of same for inspection and sale.

The list of claimants in any parish, and the part of register relating to that parish, to be deemed list of voters of such parish.

Regulation to be observed as to registration of voters.

Occupation franchise for voters in counties.

Provision as to £12 occupiers.

keep a copy of such list of claimants, and of the said copy of the register, with the marginal additions respectively as aforesaid, signed by them, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days after the same shall have been published, and shall deliver written or printed copies thereof, signed by them, to all persons applying for the same, on payment of a price for each copy, after the rate contained in the table numbered (1.) in the schedule (D.) to this Act annexed.

Sect. 6. That the list of claimants (if any) so to be made out by the overseers of every parish or township, together with the said copy of the register, with the marginal additions respectively as aforesaid, for the time being, relating to the same parish or township, shall be deemed to be the list of voters of such parish or township for the county within which such parish or township may be situate, for the purposes herein-after mentioned.

By the 30 & 31 Vict. c. 102, s. 30, the following regulations shall, in and after the year 1868, be observed with respect to the registration of voters :

1. The overseers of every parish or township shall make out or cause to be made out a list of all persons on whom a right to vote for a county in respect of the occupation of premises is conferred by this Act, in the same manner, and subject to the same regulations, as nearly as circumstances admit, in and subject to which the overseers of parishes and townships in boroughs are required by the Registration Acts to make out or cause to be made out a list of all persons entitled to vote for a member or members for a borough in respect of the occupation of premises of a clear yearly value of not less than £10.

Sect. 6. Every man shall, in and after the year 1868, be entitled to be registered as a voter, and, when registered, to vote for a member or members to serve in Parliament for a county, who is qualified as follows (that is to say) :

1. Is of full age, and not subject to any legal incapacity ; and
- 2. Is on the last day of July in any year, and has during the twelve months immediately preceding been, the occupier, as owner or tenant, of lands or tenements within the county of the rateable value of £12 or upwards ; and
3. Has during the time of such occupation been rated in respect to the premises so occupied by him to all rates (if any) made for the relief of the poor in respect of the said premises ; and
4. Has on or before the twentieth day of July in the same year paid all poor rates that have become payable by him in respect of the said premises up to the preceding fifth day of January.

By the 31 & 32 Vict. c. 58, s. 19, in the lists and registers of voters for a county the names of the persons in any parish or township on whom a right to vote for a county in respect of the occupation of premises in such parish or township is conferred by the "Representation of the People Act, 1867," shall appear in a separate list after the list of voters in such parish or township otherwise qualified, and such separate list shall be deemed to be part of the lists of county voters of such parish or township, and shall be annually made anew by the overseers of such parish or township, subject to this proviso, that the revising barrister shall erase from the separate list of such occupiers as aforesaid all persons who appear to him from the accompanying lists to be entitled to

vote in the same polling district in respect of some other qualification to which no objection is made, except in cases where any person whose name is about to be erased objects to the erasure, in which case such person shall be deemed to have given due notice of his claim to have his name inserted in the list of occupiers, and shall be dealt with accordingly.

By the 31 & 32 Vict. c. 58, s. 30, the thirtieth section of the Act of the session of the second year of king William the fourth, chapter forty-five, and the seventy-fifth section of the principal Act, shall apply to all occupiers of premises capable of conferring the franchise for a county under the "Representation of the People Act, 1867."

By the 6 Vict. s. 18, s. 7, in every year every person who shall be upon the register for the time being for any county may object to any other person upon any list of voters for such county, as not having been entitled, on the last day of July then next preceding, to have his name inserted in any list of voters for such county; and every person so objecting (save and except overseers objecting in the manner hereinbefore mentioned) shall, on or before the twenty-fifth day of August (a) in such year, give or cause to be given (b) to the overseers of the poor of the parish or township to which the list of voters containing the name of the person so objected to may relate, a notice, according to the form numbered (4.) in the said schedule (A.), or to the like effect; and the person so objecting shall also, on or before the said twenty-fifth day of August (c), give or cause to be given to the person so objected to, or leave or cause to be left at his place of abode, as described in such list, a notice, according to the form numbered (5.) in the said schedule (A.), or to the like effect (b);

1. *Registration of Electors for Counties, etc.*

Application of certain rating sections to counties.

Any person on register may object to any other person named in list as not entitled to be upon it.

Notice of objection to be given to overseers;

and also to party objected to.

(a) By the 28 & 29 Vict. c. 36, s. 4, the twentieth day of August shall be the last day for giving notices of objection to the overseers and to the person objected to; and the seventh section of the principal Act shall be read as if the word "twentieth" had been substituted therein for the word "twenty-fifth."

(b) It is sufficient, therefore, under this provision, if the objector sends the notices by the post in the ordinary way, without observing the formalities prescribed by the 100th section, (see *post*, 1120), provided they reach the overseers in time. (*Smith v. James*, K. & G. 448; *Smith v. Huggett*, *ib.* 434; 31 L. J., C. P. 38.)

(c) By the 28 & 29 Vict. c. 36, s. 6, any notice of objection to any person on the list of claimants for any parish or township may be given according to the provisions of the seventh section of the principal Act, but with that exception no notice of objection given under the provisions of the said seventh section, other than a notice to the overseers, shall be valid, unless the ground or grounds of objection be specifically stated therein; and this provision shall be deemed to be sufficiently satisfied by naming the column or columns of the list on which the objector grounds

his objection: Provided always, that if the objection be grounded on the third column, then it shall be necessary to state in the notice whether the objection relates to the nature of the voter's interest in the qualifying property, or to the value of the qualifying property, or to both; and each of such last-mentioned grounds of objection shall be deemed a separate ground of objection, as well as any objection grounded on any one of the other columns; and such last-mentioned notice may be according to the form numbered (2.) in schedule (A.) to this Act, or to the like effect, in substitution for the form numbered (5.) in schedule (A.) to the principal Act.

Sect. 7. No person objected to under the provisions of this Act shall be required to give evidence before the revising barrister in support of his right to be registered, otherwise than as such right shall be called in question in such ground or grounds of objection.

Sect. 8. Every separate ground of objection shall be treated by the revising barrister as a separate objection; and for every ground of objection which, in the opinion of the revising barrister, shall have been groundlessly or frivolously and vexa-

1. Registration of Electors for Counties, etc.

and every such notice of objection shall be signed by the party so objecting as aforesaid; and wherever the place of abode of the person objected to, as described in the said list, shall not be in the parish or township to which such list may relate, and the name of the occupying tenant of the whole or any part of the qualifying property, together with his place of abode, shall appear in such list, the person so objecting shall also, on or before the same day, give to or leave, or cause to be given or left, at the place of abode of any such occupying tenant, a duplicate notice, signed as aforesaid.

Notice of objection may be sent by the post.

Sect. 100. That it shall be sufficient, in every case of notice to any person objected to in any list of county, city, or borough voters, and in the livery list of the city of London, and also in the case of county voters to the occupying tenant whose name and place of abode appears in such respective list as aforesaid, if the notice so required to be given as aforesaid shall be sent by the post, free of postage, or the sum chargeable as postage for the same being first paid, directed to the person to whom the same shall be sent, at his place of abode as described in the said list of voters; and whenever any person shall be desirous of sending any such notice of objection by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster of any post office where money orders are received or paid, within such hours as shall have been previously given notice of at such post office, and under such regulations with respect to the registration of such letters, and the fee to be paid for such registration (which fee shall in no case exceed 2*d.* over and above the ordinary rate of postage), as shall from time to time be made by the postmaster-general in that behalf; and in all cases in which such fee shall have been duly paid, the postmaster shall compare the said notice and the duplicate, and, on being satisfied that they are alike in their address and in their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said post office; and the production by the party who posted such notice of such stamped duplicate shall be evidence of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would in the ordinary course of post have been delivered to such place: Provided also, that if no place of abode of the person objected to shall be described in the said list, or if such place of abode shall be situate out of the United Kingdom, then it shall be sufficient if notice shall be given to the said overseers, and to such occupying tenant as aforesaid (if any) in the case of a county voter, or, in the case of a city or borough voter, to the overseers or to the town clerk, or, in the case of a liveryman of the city of London, to the secondaries and clerk of the particular company to which the person objected to shall belong, as is in each of the said cases hereinbefore required.

List of persons objected to to be published.

Sect. 8. That the said overseers shall in every year include the names of all persons against whom notice of objection shall have been given to them as aforesaid in that year in a list, according to the form

tiously stated in a notice of objection, he shall, on the application of the person objected to, or any one on his behalf, and upon production of the notice of objection, award costs against the objector to the amount at least of 2*s.* 6*d.*, and this though the name of the person objected to be expunged upon some other ground of objection stated in the same notice of objection.

Sect. 9. The provisions of the hundredth section of the principal Act shall apply to notices of objection given under the provisions of this Act.

Sect. 17. For the purposes of this Act the word "value" shall in the case of an objection to any person claiming to be retained or inserted in the list as an occupying tenant mean "amount of rental."

numbered (6) in the said schedule (A.), and shall publish such list on or before the first day of September in such year, and shall also keep a copy of such list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday during the first fourteen days of the said month of September, and shall deliver a copy of such list to any person requiring the same on payment of a price for each copy after the rate contained in the table numbered (1) in the schedule (D.) to this Act annexed.

2. *Registration for Cities and Boroughs, etc.*

Sect. 9. That on or before the twenty-ninth day of August (a) in every year the overseers of every parish or township shall deliver to the clerk of the peace of the county wherein the said parish or township is situate the said copy of the register, and the said list of claimants, with the marginal additions respectively as aforesaid, and also a copy of the list of persons objected to, respectively signed as aforesaid, and relating to their parish or township.

Lists etc., to be delivered to the clerk of the peace.

II. Registration of Electors for Cities and Boroughs, and Duties of Overseers therein.

By the 6 Vict. c. 18, s. 10 (b), reciting, that for the purpose of preparing like lists, and forming a register of all persons entitled to vote in the election of a member or members to serve in Parliament for any city or borough, it is enacted, that the town clerk of every such city or borough shall cause a sufficient number of forms of precepts, notices, and lists to be printed according to the forms numbered (1, 2, 3, 4, 8, 12) in the schedule (B.) and of the schedule numbered (1) in the schedule (D.) to this Act annexed, and shall on or before the tenth day of June in every year make, and cause to be delivered to the overseers of the poor of every parish or township situate wholly or in part within such city or borough, or within any place sharing in the election for such city or borough, his precept according to the form numbered (1) in the said schedule (B.), and also a sufficient number of the said printed forms of notices and lists, and of the said table.

6 Vict. c. 18.
Town clerk to have forms of precepts, etc., printed.

To issue his precept to overseers.

Sect. 11. That the overseers of every such parish or township shall, on or before the twentieth day of June in every year, publish a notice in writing according to form numbered (2) in the said schedule (B.), stating that no person will be entitled to have his name inserted in any list of voters for the city or borough then next to be made in respect of the occupation of premises of the clear yearly value of not less than £10, situate wholly or in part within such parish or township, unless he shall pay, on or before the twentieth day of July then next ensuing, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises during the twelve calendar months next before the sixth day of April (c) then last past.

Overseers to give public notice as to payment of rates and taxes by occupiers of premises of yearly value of £10.

(a) By the 28 & 29 Vict. c. 36, s. 5, the first day of September shall be the last day for the delivery, by the overseers, to the clerk of the peace, of the papers mentioned in the ninth section of the principal Act; and such section shall be read as if the words "first day of September" had been

substituted therein for the words "twenty-ninth day of August."

(b) The above Act repeals the Reform Act with respect to registering, except as to any register heretofore made.

(c) See the 11 & 12 Vict. c. 90, *post*, 1123, n.

2. *Registration for Cities and Boroughs, etc.*

Overseers to have power of inspecting tax assessments, etc.

Assessors or collectors of taxes to deliver to overseers a list of persons in arrear of taxes payable at April last past.

Sect. 12. That the overseers of every parish or township, for their assistance in making out the list of voters as hereinafter mentioned (upon request made by them, or any of them, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the month of July in every year, to any assessor or collector of taxes, or to any other officer having the custody of any tax assessment or duplicate for such parish or township), shall have free liberty to inspect any such tax assessment or duplicate, and to extract such particulars as may appear to such overseer or overseers to be necessary; and every such assessor or collector of taxes shall, within two days after the twentieth day of July in every year, make out and deliver to the said overseers a list containing the name and place of abode of every person who shall not have paid on or before the said twentieth day of July the assessed taxes which shall have become payable from him in respect of any premises within the said parish or township during the twelve calendar months next before the sixth day of April then last past (a); and the overseers shall keep the said list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after the list of voters shall have been published, as hereinafter mentioned.

Overseers to prepare and publish lists of persons (other than free-men) entitled to vote.

Sect. 13. That the overseers of every such parish or township shall, on or before the last day of July in every year, make out or cause to be made out, according to the form numbered (3) in the schedule (B.) to this Act annexed, an alphabetical list of all persons who may be entitled to vote in the election of a member or members to serve in Parliament for such city or borough, in respect of the occupation of premises of the clear yearly value of not less than £10, situate wholly or in part within such parish or township (b), and another alphabetical list, according to

(a) This provision would appear to be superseded by the 30 & 31 Vict. c. 102, s. 29, *post*, 1124.

(b) By the 2 Will. 4, c. 45, s. 27, it is enacted that in every city or borough which shall return a member or members to serve in any future Parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being either separately or jointly with any land within such city, borough, or place occupied therewith by him as owner or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than £10, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future Parliament for such city or borough; provided always, that no such person shall be so registered in any year unless he shall have occupied such premises as aforesaid for twelve calendar months next

previous to the last day of July in such year, nor unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township made during the time of such his occupation so required as aforesaid, nor unless such person shall have paid on or before the twentieth day of July in such year all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the sixth day of April then next preceding; provided also, that no such person shall be so registered in any year unless he shall have resided for six calendar months next previous to the last day of July in such year within the city or borough or within the place sharing in the election for the city or borough in respect of which such city, borough, or place respectively he shall be entitled to vote, or within seven statute miles thereof or any part thereof.

By the 30 & 31 Vict. c. 102, s. 3,

the form numbered (4) in the said schedule (B.) of all other persons (ex-

2. *Registration for Cities and Boroughs, etc.*

every man shall, in and after the year one thousand eight hundred and sixty-eight, be entitled to be registered as a voter, and, when registered, to vote for a member or members to serve in Parliament for a borough, who is qualified as follows; that is to say,—

1. Is of full age, and not subject to any legal incapacity; and
2. Is on the last day of July in any year, and has during the whole of the preceding twelve calendar months been, an inhabitant occupier, as owner or tenant, of any dwelling-house within the borough; and
3. Has during the time of such occupation been rated as an ordinary occupier in respect of the premises so occupied by him within the borough to all rates (if any) made for the relief of the poor in respect of such premises; and
4. Has on or before the twentieth day of July in the same year *bond fide* paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor rates that have become payable by him in respect of the said premises up to the preceding fifth day of January;

Provided that no man shall under this section be entitled to be registered as a voter by reason of his being a joint occupier of any dwelling-house.

Sect. 4. Every man shall, in and after the year one thousand eight hundred and sixty-eight, be entitled to be registered as a voter, and, when registered, to vote for a member or members to serve in Parliament for a borough, who is qualified as follows; that is to say,—

1. Is of full age, and not subject to any legal incapacity; and
2. As a lodger has occupied in the same borough separately and as sole tenant for the twelve months preceding the last day of July in any year the same lodgings, such lodgings being part of one and the same dwelling-house, and of a clear yearly value, if let unfurnished, of £10 or upwards; and
3. Has resided in such lodgings during the twelve months immediately preceding the last day of

July, and has claimed to be registered as a voter at the next ensuing registration of voters.

In order that a voter may not be deprived of his vote by the neglect or fraud of the overseers, the 6 Vict. c. 18, s. 30, provides that in every city or borough which shall return a member or members to serve in any future Parliament, and in every place sharing in the election for such city or borough, it shall be lawful for any person occupying any house, warehouse, counting-house, shop, or other building, either separately or jointly with any land occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, in any parish or township in which there shall be a rate for the relief of the poor, to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming and actually paying or tendering the full amount of the rate or rates, if any, then due in respect of such premises, the overseers of the parish or township in which such premises are situate are hereby required to put the name of such occupier upon the rate for the time being; and in case such overseers shall neglect or refuse so to do, such occupier shall nevertheless for the purposes of this Act be deemed to have been rated to the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid; Provided always, that where by virtue of any Act of Parliament the landlord shall be liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord; but in case the tenant who shall have been rated for such premises in consequence of any such claim as aforesaid shall make default in the payment of the poor's rate due in respect thereof, such landlord shall be and remain liable for the payment thereof in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant.

By the 11 & 12 Vict. c. 90, s. 1, it

2. *Registration for Cities and Boroughs, etc.*

is enacted, that after the first day of January, 1849, no person shall be required, in order to entitle him to have his name inserted in any list of voters for any city, town, or borough in England, to have paid any poor's rates or assessed taxes, except such as shall have become payable from him previously to the fifth day of January in the same year; and that no person shall be entitled to be on any such list of voters unless the poor's rates and assessed taxes payable from him previously to the fifth day of January shall be paid on or before the twentieth day of July next following.

The 14 & 15 Vict. c. 14, s. 1, recites 2 & 3 Will. 4, c. 45, and 11 & 12 Vict. c. 90, and enacts, that from and after the passing of this Act no person so claiming to be rated, and paying or tendering on or before the twentieth day of July in each year the full amount of the rate or rates (if any) due in respect of such premises on the fifth day of January preceding, shall be required to make any further claim in regard to any future rate upon the premises in respect whereof his right to vote in any such election as aforesaid shall arise, but shall be entitled to be put on the list and to be registered as a voter, provided he shall have occupied the premises in the manner and for the time required by the said firstly-recited Act, and provided the poor's rates and assessed taxes chargeable upon the same shall have been paid for the period and up to the time required by law in respect of all persons entitled to vote in the election of members of Parliament for any borough under the provisions of the said firstly-recited Act.

Sect. 2. Provided always, that every person so claiming as aforesaid who shall be registered as a voter in respect of the premises to which his claim relates shall, in respect of every rate for the relief of the poor made and published after such claim as aforesaid, while he continues to occupy the same premises and to be a registered voter in respect thereof, be liable to the same extent and in the same manner as in respect of the rate published next before the making of such claim.

Sect. 3. Provided always, that in cases where by any composition with the landlord a less sum shall be payable than the full amount of rate which, except for such composition, would be due in respect of the same

premises, the occupier claiming to be rated shall not be bound to pay or tender more than the amount then payable under such composition.

By the 30 & 31 Vict. c. 102, s. 28, where any poor rate due on the fifth day of January in any year from an occupier in respect of premises capable of conferring the franchise for a borough remains unpaid on the first day of June following, the overseers whose duty it may be to collect such rate shall, on or before the twentieth of the same month of June, unless such rate has previously been paid, or has been duly demanded by a demand note, to be served in like manner as the notice in this section referred to, give or cause to be given a notice in the form set forth in schedule (E.) to this Act to every such occupier. The notice shall be deemed to be duly given if delivered to the occupier or left at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable. Any overseer who shall wilfully withhold such notice, with intent to keep such occupier off the list or register of voters for the said borough shall be deemed guilty of a breach of duty in the execution of the Registration Acts.

Sect. 29. The overseers of every parish wholly or partly within a borough shall, on or before the twenty-second day of July in every year, make out a list containing the name and place of abode of every person who shall not have paid, on or before the twentieth day of the same month, all poor rates which shall have become payable from him in respect of any premises within the said parish before the fifth day of January then last past, and the overseers shall keep the said list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after the said twenty-second day of July; any overseer wilfully neglecting or refusing to make out such list, or to allow the same to be perused as aforesaid, shall be deemed guilty of a breach of duty in the execution of the Registration Acts.

By the 31 & 32 Vict. c. 58, s. 20, notwithstanding anything contained in the thirtieth section of the "Representation of the People Act, 1867," and the thirty-eighth section of the

cept freemen (a) who may be entitled to vote in the election of such city or borough by virtue of any other right whatsoever (b), and in each of the said lists the Christian name and surname of every such person shall be written at full length, together with the place of his abode and the nature of his qualification, and where any person shall be entitled to vote in respect of any property, then the name of the street, lane, and the number of the house (if any), or other description of the place where such property may be situate, shall be specified in the list; and the said overseers shall sign such lists, and shall forthwith cause a sufficient number of copies of each of the said lists to be written or printed, and shall publish copies of the said lists on or before the first day of August

2. *Registration for Cities and Boroughs, etc.*

principal Act therein referred to, the names of the persons in any parish or township on whom a right to vote for a member or members to serve for any borough in respect of the occupation of lodgings is conferred by the "Representation of the People Act, 1867," shall, in the lists and register of voters for such boroughs, appear in a separate list.

(a) The list of freemen is made out by the town clerk.

(b) The rights here mentioned are the rights of voting in cities and boroughs which the "Reform Act" found in existence, and has either permanently or temporarily continued.

I. Those to whom the franchise is permanently continued are the following:—

Freeholders and burgage tenants in cities and towns being counties corporate having estates of inheritance.

Freeholders and burgage tenants as before, having estates for life or lives, of the value of £10 per annum.

Freeholders and burgage tenants as before, having estates for life or lives, under the value of £10 per annum, who—

a, actually *bonâ fide* occupy the premises;

b, were seised of the same on the passing of the Act (7th June, 1832);

c, having acquired the same since that date by marriage, marriage settlement, devise, or promotion to a benefice or office (sect. 18).

Freemen and burgesses by servitude, and those claiming by birth through them, in other places than London.

II. Those to whom the franchise is temporarily reserved may be divided into—

1st. Those whose rights are reserved to them, and those claiming under them; and

2nd. Those whose franchise is

simply reserved without any such power of transmission.

The former of these are only—

Freemen who were admitted, or entitled to be admitted, for any cause, on the 1st of March, 1831, and those claiming by birth through them (sect. 32);

The latter comprises—

a. Freeholders or burgage tenants in ordinary borough towns (including those of New Shoreham, Cricklade, Aylesbury, and East Retford) who were entitled to vote on the 1st of March, 1831, or had acquired the estate between that date and the passing of the Act (7th June, 1832) by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice or office. [See the case of a minor at the passing of the "Reform Act," Aylesbury, 1 P. R. & D. 83.]

b. Electors qualified as—

Inhabitants generally.

Inhabitants householders.

Inhabitants paying scot and lot potwallers.

Upon all alike the "Reform Act" imposes the necessity of a registration, and residence for six calendar months previous to the last day of July within the city or borough, as the case may be, or within seven statute miles thereof, or if the qualification be within a contributory borough, the voter must reside, as before, within, or within seven statute miles of, such contributory borough, to be calculated according to the directions of schedule E. 2; and by 6 Vict. c. 18, s. 79, it is provided that no person shall be entitled to vote at any future election, etc., for any city or borough unless he shall have resided since July 31st, and "at the time of voting shall continue to reside," within the city or borough, or within seven miles thereof.

2. *Registration for Cities and Boroughs, etc.*

Copies of lists to be kept for inspection and sale.

Occupiers in boroughs to be rated, and not owners.

in such year, and shall likewise keep a copy of each of the said lists, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after such lists shall have been so published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the schedule (D.) to this Act annexed.

By the 30 & 31 Vict. c. 102, s. 7, where the owner is rated at the time of the passing of this Act to the poor rate in respect of a dwelling-house or other tenement situate in a parish wholly or partly in a borough, instead of the occupier, his liability to be rated in any future poor rate shall cease, and the following enactments shall take effect with respect to rating in all boroughs:—

1. After the passing of this Act no owner of any dwelling-house or other tenement situate in a parish either wholly or partly within a borough shall be rated to the poor rate instead of the occupier, except as hereinafter mentioned :
2. The full rateable value of every dwelling-house or other separate tenement, and the full rate in the pound payable by the occupier, and the name of the occupier, shall be entered in the rate book :

Where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner of such dwelling-house or tenement shall be rated in respect thereof to the poor rate :

Provided as follows :

1. That nothing in this Act contained shall affect any composition existing at the time of the passing of this Act, so nevertheless that no such composition shall remain in force beyond the twenty-ninth day of September next :
2. That nothing herein contained shall affect any rate made previously to the passing of this Act, and the powers conferred by any subsisting Act for the purpose of collecting and recovering a poor rate shall remain and continue in force for the collection and recovery of any such rate or composition :
3. That where the occupier under a tenancy subsisting at the time of the passing of this Act of any dwelling-house or other tenement which has been let to him free from rates is rated and has paid rates in pursuance of this Act, he may deduct from any rent due or accruing due from him in respect of the said dwelling-house or other tenement any amount paid by him on account of the rates to which he may be rendered liable by this Act.

Sect. 8. Where any occupier of a dwelling-house or other tenement (for which the owner at the time of the passing of this Act is rated or is liable to be rated) would be entitled to be registered as an occupier in pursuance of this Act at the first registration of parliamentary voters to be made after the year 1867 if he had been rated to the poor rate for the whole of the required period, such occupier shall, notwithstanding he may not have been rated prior to the twenty-ninth day of September, 1867, as an ordinary occupier, be entitled to be registered, subject to the following conditions:—

1. That he has been duly rated as an ordinary occupier to all poor rates in respect of the premises after the liability of the owner to be rated to the poor rate has ceased under the provisions of this Act.
2. That he has on or before the twentieth day of July, 1868, paid all poor rates which have become payable by him as an ordinary occupier in respect of the premises up to the preceding fifth day of January.

Provisoes as to compositions, etc.

First registration of occupiers of dwelling-houses, etc.

By the 6 Vict. c. 18, s. 14, the town clerk of every city or borough shall, on or before the last day of July in the present and in each succeeding year, make out, according to the form numbered (5) in the said schedule (B.), an alphabetical list of all the freemen of such city or borough who may be entitled to vote in the election of a member or members to serve in any future Parliament for such city or borough, together with the respective places of their abode, and shall sign such list, and cause copies thereof to be written or printed, and shall publish the said list on or before the first day of August in such year, and shall likewise keep a copy thereof, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after such lists shall have been published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the schedule (D.) to this Act annexed.

2. Registration for Cities and Boroughs, etc.

Town clerks to prepare and publish lists of freemen.

Sect. 15. That every person whose name shall have been omitted in any such list of voters for any city or borough so to be made out as aforesaid, and who shall claim, as having been entitled on the last day of July then next preceding, to have his name inserted therein, and every person desirous of being registered for a different qualification than that for which his name appears in the said list shall, on or before the twenty-fifth day of August in that year, give or cause to be given a notice, according to the form numbered (6) in the said schedule (B.), or to the like effect, to the overseers of that parish or township in the list whereof he shall claim to have his name inserted, or if he shall claim as a freeman of any city or borough, or place sharing in the election therewith, then he shall in like manner give or cause to be given to the town clerk of such city, borough, or place a notice according to the form numbered (7) in the said schedule (B.), or to the like effect; and the overseers and town clerks respectively shall include the names of all persons so claiming as aforesaid in lists according to the forms numbered (8) and (9) respectively in the said schedule (B.).

Persons omitted from borough lists to give notice of their claims.

Lists of claimants to be made.

By the 30 & 31 Vict. c. 102, s. 30—

2. The claim of every person desirous of being registered as a voter for a member or members to serve for any borough in respect of the occupation of lodgings shall be in the form numbered (1) in schedule (G.), or to the like effect, and shall have annexed thereto a declaration in the form and be certified in the manner in the said schedule mentioned, or as near thereto as circumstances admit; and every such claim shall after the last day of July and on or before the twenty-fifth day of August in any year be delivered to the overseers of the parish in which such lodgings shall be situate, and the particulars of such claim shall be duly published by such overseers on or before the first day of September next ensuing in a separate list, according to the form numbered (2) in the said schedule (G.):

So much of section 18 of the Act of the session of the sixth year of the reign of her present Majesty, chapter eighteen, as relates to the manner of publishing lists of claimants, and to the delivery of copies thereof to persons requiring the same, shall apply to every such claim and list; and all the provisions of the 38th and 39th sections of the same Act with respect to the proof of the claims of persons omitted from the list of voters, and to objections thereto, and to the hearing thereof, shall, so far as the same are applicable, apply to claims and objections, and to the hearing thereof, under this section.

By the 6 Vict. c. 18, s. 16, it shall be lawful for any person whose name shall be on any list of voters for the time being for any city or

Registered electors and claim-

2. *Registration for Cities and Boroughs, etc.*

ants may inspect rate books.

Persons named in list may object to others as not being entitled to be in the list.

Notice of objection to be given to overseers or to town clerk; and also to person objected to.

List of persons objected to to be made.

Such lists and lists of claimants to be published.

Copies of lists and notices of objection to be kept for inspection.

Overseers to deliver copies of lists to town clerk.

Freeholders in Horsham and Malmesbury entitled to vote for New Shoreham and Cricklade, where to be registered.

borough, or for any person who shall have claimed to have his name inserted in any such list, upon request made by such person, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, between the tenth day of August and the last day of August, to any overseer or other officer having the custody of any poor-rate book, to inspect such poor-rate book, and make extracts therefrom for any purpose relating to any claim or objection made or intended to be made by or against such person; and every such overseer or other officer as aforesaid is hereby required, upon such request as aforesaid, to permit such inspection, and the making of such extracts, without payment of any fee.

Sect. 17. That every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not having been entitled on the last day of July next preceding to have his name inserted in any list of voters for the same city or borough; and every person so objecting shall, on or before the twenty-fifth day of August in that year, give or cause to be given (a) a notice, according to the form numbered (10) in the said schedule (B.), or to the like effect, to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted, or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town clerk of such city or borough; and every person so objecting shall also give or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice according to the form numbered (11) in the said schedule (B.); and every notice of objection shall be signed by the person objecting.

Sect. 18. That the said overseers shall include the names of all persons so objected to in a list, according to the form numbered (12) in the said schedule (B.); and every town clerk shall include the names of all persons so objected to as freemen in a list, according to the form numbered (13) in the said schedule (B.); and the said overseers and town clerks respectively shall sign each of the said lists, and cause copies thereof to be written or printed, and shall publish the said lists of persons objected to and the said list of claimants as aforesaid, on or before the first day of September in the said year; and shall keep copies of the said lists, and shall allow the same, and also the notices of objection which they shall have received, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September in the said year, and shall deliver copies of each of such lists to any person requiring the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the schedule (D.) to this Act annexed.

Sect. 19. That the said overseers shall, on or before the 29th day of August in every year, deliver to the said town clerk a copy of the said list of voters, made out by them as aforesaid, and a copy of the said list of persons who shall have claimed as aforesaid, and a copy of the list of persons objected to as aforesaid.

Sect. 20 relates to the mode of preparing lists of the freemen and liverymen of the city of London.

Sect. 21. That for all the purposes of forming a register of voters for the borough of New Shoreham and for the borough of Cricklade respectively, under the provisions of this Act, all persons having a right to vote for the borough of New Shoreham in respect of any freeholds which may be situate in the borough of Horsham, or for the borough of Cricklade

(a) See note (b), ante, 1119.

in respect of any freeholds which may be situate in the borough of Malmesbury, shall be inserted in the same lists of voters respectively in which they are to be inserted by the directions in that behalf of the said recited Act (a).

3. *Publication of Notices, etc.*

Provision as to places having no overseers.

Sect. 22. That every precinct or place, whether extra-parochial or otherwise, which shall have no overseers of the poor, shall, for the purpose of making any claim, and making out any list directed by this Act, be deemed to be within the parish or township adjoining thereto, and sharing in the right of election to which such claim or list may relate; and if such parish or place shall adjoin two or more parishes or townships situated as aforesaid, it shall be deemed to be within the least populous of such parishes or townships, according to the last census for the time being.

III. Publication of Notices, Lists, Registers, etc.

By 6 Vict. c. 18, s. 23, it is enacted, that every notice, list, register, or other document herein required to be published, shall be so published, except where some other mode or place of publication is herein expressly provided, by being fixed in some public and conspicuous situation on the outside of the outer door or outer wall near the door of the buildings hereinafter named for that purpose (that is to say): in the case of publication by overseers, every church and public chapel in their parish or township, including places of public worship which do not belong to the established church; and in the case of publication by a town clerk, the town hall, or in either case, if there be no such building as is hereinbefore named for that purpose, then in some public and conspicuous situation within the parish or township, city, borough, or place respectively.

What shall be publication of notice.

Sect. 24. That in all cases in which any notice, list, register, or other document shall, pursuant to the provisions aforesaid, be affixed on or near the door of any church, chapel, town hall, or other place, the same shall continue so affixed for a period including two consecutive Sundays at the least next after the day on or before which the same is hereinbefore required to be published; and in case the same shall be destroyed, mutilated, effaced, or removed before the expiration of such period, the party hereinbefore required to publish the same as aforesaid shall, as soon as conveniently may be, publish in like manner in its place another notice, list, register, or other document, to the like purport and effect with the notice, list, register, paper, or document so destroyed, mutilated, effaced, or removed.

Time for which publication shall be.

Sect. 25. That every person who shall wilfully destroy, mutilate, efface, or remove any notice, list, register, or other document so affixed as aforesaid, during the period during which the same is hereinbefore required to remain so affixed, shall for every such offence forfeit any sum not exceeding 40s., nor less than 10s., to any person who will sue for the same, to be recovered in a summary manner before any two justices of the peace.

Penalty for hindering publication.

Sect. 26. That no list shall be invalidated by reason that it shall not have been affixed in every place and for the full time hereinbefore required for publication thereof, but that the barrister shall proceed to revise and adjudicate upon every such list which shall have been affixed in any place and for any part of the time hereinbefore mentioned in that behalf; but nothing herein contained shall be construed to exempt the overseer, town clerk, or other person charged with the duty of publishing such list as aforesaid from the penalties of his neglect or wilful default.

List not invalidated by imperfect publication.

(a) See the 2 Will. 4, c. 45, s. 34.

**4. Revising
Barristers'
Duties, etc.**

If no list made out or published, former list to be in force.

Sect. 27. That in case no list of voters shall have been made out for any parish, township, or place in any year, or in case such list shall not have been affixed in any place hereinbefore mentioned in that behalf, the register of voters for that parish, township, or place then in force shall be taken to be the list of voters for that parish, township, or place for the year then next ensuing, and the provisions herein contained respecting any such list of voters shall be taken to apply to such register as aforesaid.

**IV. Appointment and Duties of Barristers for Revising
Lists, etc.**

Sects. 28, 29, and 30 of the 6 Vict. c. 18, relate to the appointment of barristers for revising the lists of voters.

Barrister to notify his appointment to clerk of peace and town clerks, who are to transmit to him abstracts and lists.

Sect. 31. That every such revising barrister shall notify his appointment to the clerk of the peace of every county and to the town clerk of every city and borough of which he shall be appointed to revise the lists; and each clerk of the peace shall as soon as possible transmit an abstract of the number of persons objected to by the overseers and by other persons in each parish and township in and for the same county, and the town clerk of every city or borough shall as soon as possible transmit an abstract of the said several lists of claimants, and the lists of persons objected to, in each parish or township in and for the same city or borough, to the said barrister, in order that proper times and places for holding Courts for the revision of such lists respectively may be appointed.

Barristers to hold Courts for revising lists of voters for counties within a certain period, and to give notice of times and places of holding such Courts to clerk of the peace, who is to give notice thereof by advertisement, and to overseers.

Sect. 32. That the barrister appointed to revise the lists of any county shall make a circuit and hold open Courts for such revision at each of the places which now are or hereafter may be appointed as polling places for such county, and at any other places within the said county which he shall think expedient, at convenient times between the fifteenth day of September inclusive and the last day of October inclusive in the then current year, and shall, ten days at the least before the holding of the first Court of revision, give notice to the clerk of the peace of the several times and places at which the said Court will be holden, and of the several parishes the lists of and for which will be revised at each of the said Courts; and the said clerk of the peace shall forthwith cause public notice thereof to be given by advertisement in one or more of the newspapers circulating within the said county, and shall cause a sufficient number of copies of the said notice to be written or printed, and shall deliver or send a copy thereof to the overseers of every parish or township, and require them to publish the said copy of the said notice, and to attend at the Court therein appointed for the revision of the list of voters relating to their said parish or township, and the said overseers shall forthwith publish the said copy of the said notice accordingly.

As to time for revision of county lists.

But by the 28 & 29 Vict. c. 36, s. 12, no Court should be holden by a revising barrister for the revision of the lists of any county before the 20th day of September in any year.

Barristers to hold Courts for revising lists of voters for boroughs, and give notice thereof to town clerk, who is to publish the same.

By the 6 Vict. c. 18, s. 33, the barrister or barristers appointed to revise the lists of voters for any city or borough shall hold an open Court or Courts for that purpose within such city or borough, and also within every place sharing in the election for such city or borough, between the fifteenth day of September inclusive and the last day of October inclusive in the then current year, and such barrister or barristers shall, seven days at the least before holding any such Court or Courts, give notice to the town clerk of such city or borough of the time and place of holding the same; and if such barrister shall, in his discretion, deem it expedient to

hold his Courts at different times and places within the said city or borough, the said barrister shall in such case give notice to the said town clerk of such times and places so appointed, and of the parishes allotted to each Court; and the town clerk shall forthwith publish a notice of the time and place of the holding of every such Court as aforesaid on the town hall, and on every church and chapel within such city or borough, or, if there be no church or chapel or town hall therein, then in some public and conspicuous place therein.

4. *Revising Barristers' Duties, etc.*

Sect. 34. That the clerk of the peace of every county, at the opening of the first Court to be so holden as aforesaid in and for the same county, shall deliver or cause to be delivered to the said barrister or barristers all the list of voters for the then current year, with the marginal additions as aforesaid, and lists of persons objected to in the said year, relating to the said county, and also one or more printed copies of the register of voters then in force for the said county; and the overseers of every parish and township shall attend the Court to be holden for revising the lists relating to their parish or township, and shall deliver to the barrister or barristers holding such Court the original notices of claim and notices of objection given to them as aforesaid; and the said clerk of the peace and overseers shall (if required) answer upon oath all such questions as such barrister or barristers may put to them, and produce all documents, papers, and writings in their possession, custody, or power touching any matter herein mentioned.

Clerk of peace to attend first Court, and overseers to attend Courts for their respective districts and parishes, and produce lists of voters, and answer questions (a).

By the 31 & 32 Vict. c. 58, s. 28, the overseers of every parish or township shall produce to the barrister appointed to revise the lists of voters of any county, whilst holding his Court for revising the lists relating to their parish or township, all rates made for the relief of the poor of their parish or township between the 5th day of January in the year then last past and the last day of July in the then present year; and any overseer wilfully refusing or neglecting to produce any such rates shall be deemed wilfully guilty of a breach of duty in the execution of the principal Act, and be punishable accordingly.

Production of rate books by overseers, 6 Vict. c. 18, ss. 34, 35.

Sect. 29. The barrister appointed to revise the lists of voters of any county, whilst holding his Court for revising the lists relating to a parish or township, may require any overseer or overseers of a past year, or other person having the custody of any poor rate of the then current or any past year, or any relieving officer, to attend before him at any such Court, and they shall attend accordingly and answer all such questions as may be put to them by the barrister; and any overseer or relieving officer wilfully refusing or neglecting to comply with the requirements authorized to be made by the revising barrister in pursuance of this section shall be punishable in the same manner in which an overseer wilfully guilty of a breach of duty in the execution of the principal Act is punishable under the principal Act.

Power of revising barrister to summon overseers, etc., 6 Vict. c. 18, ss. 34, 35.

By the 6 Vict. c. 18, s. 35, the town clerk of every city or borough, and the several overseers for the time being of every parish or township therein, and in the city of London the secondaries and the clerks of the several livery companies of such city, shall attend the first Court to be holden before every such barrister for every such city or borough, unless they shall have been respectively required by notice to attend at some other Court, in which case they shall attend the said Court as required; and the said overseers, town clerks, and secondaries respectively shall, at the opening of the said Court, deliver to the said barrister the several lists so made by them respectively as aforesaid, and also the original notices of

Town clerks, overseers, and in London secondaries and clerks of companies, to attend Courts, to produce lists, and answer questions, etc.

(a) The clerk of the peace must also deliver to the barrister any declarations which may have been made

under the 28 & 29 Vict. c. 36, s. 10, *ante*, 1116, n. (c).

4. *Revising Barristers' Duties, etc.*

Power of barrister to require attendance of overseer of past year, and assessor and collector, etc., of taxes, who shall answer upon oath all questions put to them.

Voters residing out of polling district to which parish wherein qualification is situate belongs may vote in another polling district, on making claim before revising barrister.

Barrister to have power to insert in county lists names of claimants omitted by overseer on proof of claim and qualification.

Power of barrister to insert names in lists of borough voters.

Any person on list of voters may object to claimants.

claim and of objection received by them as aforesaid; and the said overseers shall also produce at the said Court all rates made for the relief of the poor of their respective parishes or townships, between the sixth day of April in the year then last past and the last day of July in the then present year; and the said town clerks, overseers, secondaries, and clerks respectively shall answer upon oath all such questions as any such barrister may put to them or any of them and produce all documents, papers, and writings in their possession, custody, or power touching any matter necessary for revising the list of voters; and every such barrister shall have power to require any assessor, collector of taxes, or other officer having the custody of any tax assessment or duplicate, or any overseer or overseers of a past year, or other person having the custody of any poor rate of the then current or any past year, or any relieving officer, and in the city of London the chamberlain or his deputy, to attend before him at any Court to be holden by him in pursuance of this Act, and they shall attend accordingly, and answer upon oath all such questions as such barrister may put to them.

Sect. 36. That any person whose name shall appear in the list of voters of any parish or township in and for any county, and whose place of abode, as stated in such list, shall not be within the polling district at which the said parish or township shall be allotted to poll, but within the same county, shall be at liberty to make his claim before the revising barrister to vote at the polling place of the district wherein his said place of abode may be situate; and any person whose name shall appear in any list as aforesaid, and whose place of abode, as stated in such list, shall not be within the same county, shall be at liberty in like manner to make his claim to vote at the polling place of any district within the same county; and every such person shall make his claim in writing under his hand, and such claim shall be delivered to and verified before the revising barrister holding his Court for the revision of the list of voters in which the name of such person shall appear as aforesaid, and it shall then be lawful for the said barrister to insert in the said list, against the name of such person so claiming as aforesaid, the name of the polling place at which such person shall be registered to vote; and such person so registered shall be admitted to vote at every contested election for the said county at the said last-mentioned polling place, and not elsewhere, anything in the said recited Act to the contrary notwithstanding.

Sect. 37. That if any person who shall have given to the overseers of any parish or township due notice of his claim to have his name inserted in the list of persons entitled to vote in the election of a knight or knights of the shire shall have been omitted by such overseers from such list, it shall be lawful for the revising barrister, upon the revision of such list, to insert therein the name of the person so omitted, in case it shall be proved to the satisfaction of such barrister that such person gave due notice of such his claim to the said overseers, and that he was entitled on the last day of July then next preceding to be inserted in the said list of voters.

Sect. 38. That the revising barrister shall insert in any list of voters for any city or borough the name of every person omitted who shall be proved to the satisfaction of such barrister to have given due notice of his claim to be inserted in such list, and to have been entitled on the last day of July then next preceding to have his name inserted therein in respect of the qualification described in such notice of claim.

Sect. 39. That it shall be lawful for any person whose name shall be on any list of voters for any county, city, or borough to oppose the claim of any person so omitted as aforesaid to have his name inserted in any list of voters for the same county, city, or borough; and such person intending to oppose any such claim shall, in the Court to be holden as

aforesaid for the revision of such list, and before the hearing of the said claim, give notice in writing to the revising barrister of his intention to oppose the said claim, and shall thereupon be admitted to oppose the same, by evidence or otherwise, without any previous or other notice, and shall have the same rights, powers, and liabilities as to costs, appeal, and other matters relating to the hearing and determination of the said claim, as any person who shall have duly objected to the name of any other person being retained on any list of voters, and who shall appear and prove the requisite notices as hereinafter mentioned.

*4. Revising
Barristers'
Duties, etc.*

Sect. 40. That the revising barrister shall correct any mistake which shall be proved to him to have been made in any list, and shall expunge the name of every person whose qualification, as stated in any list, shall be insufficient in law to entitle such person to vote, and also the name of every person who shall be proved to him to be dead; and wherever the Christian name, or the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted in any case where the same is by this Act directed to be specified therein, or if any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification, shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list: Provided always, that, whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, nor shall the barrister be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same; and where the name of any person inserted in any list of voters shall have been objected to by the overseers, or by any other person, and such other person so objecting shall appear by himself, or by some one on his behalf, in support of such objection, and shall prove that he gave the notice or notices respectively required by this Act to be given by him, every such barrister shall then require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then incapacitated by any law or statute from voting in the election of members to serve in Parliament, such barrister shall expunge the name of every such person from the said lists: Provided always, that where any person whose name appears on any list of voters for any county shall be objected to on the ground of having changed his place of abode without having sent in a fresh notice of claim, it shall be lawful for the barrister on revising the list to retain the name of such person on the list of voters, provided that such person, or some one in his behalf, shall prove that he possessed, on the last day of July, the same qualification in respect of which his name has been inserted in such list, and shall also supply his true place of abode, which the said barrister shall insert in such list.

Corrections which may be made by barrister in register.

No change to be made of qualification stated in lists.

Mode of proceeding in cases of objection.

Provision in certain cases of change of abode.

Sect. 41. That every revising barrister holding any Court under this Act shall have power to adjourn the same from time to time, and from any one place to any other place within the same county, or within the same city or borough, but so that no such adjourned Court shall be holden after the last day of October in any year; and at every court to be holden as aforesaid by any revising barrister the said barrister shall have power

Power of revising barristers to adjourn courts, administer oath, etc.

4. *Revising Barristers' Duties, etc.*

Persons swearing falsely guilty of perjury.

Barrister in open Court to decide upon validity of claims and objections.

to administer an oath to all persons examined before him, and all parties whether claiming or objecting or objected to, and all persons whatsoever, may be examined upon oath touching the matters in question; and every person taking any oath or affirmation under this Act, who shall wilfully swear or affirm falsely, shall be deemed guilty of perjury, and at the holding of such respective Courts no party or other person shall appear or be attended by counsel; and every such barrister shall, upon the hearing in open Court, finally determine upon the validity of such claims and objections, and shall for that purpose have the same powers and proceed in the same manner (except where otherwise directed by this Act) as the returning officer of any county, city, or borough, according to the laws and usages observed at elections previous to the passing of the said recited Act; and such barrister shall in open Court write his initials against the names respectively expunged or inserted, and against any part of the said lists in which any mistake shall have been corrected or any omission supplied or any insertion made by him, and shall sign his name (a) to every page of the several lists so settled.

Power to barrister to give costs in certain cases to parties claiming or objecting.

Sect. 46. That if in any case it shall appear to any revising barrister holding any Court as aforesaid that any person shall under this Act have made or attempted to sustain any groundless or frivolous and vexatious claim or objection or title to have any name inserted or retained in any list of voters, it shall be lawful for the said barrister, in his discretion, to make such order as he shall think fit for the payment by such person of the costs or of any part of the costs of any person or persons in resisting such claim or objection or title; and in every such case the said barrister shall make an order in writing, specifying the sum which he shall order to be paid for such costs, and by and to whom and when and where the same sum shall be paid, and shall date and sign the said order, and deliver it to the person or persons to whom the said sum shall therein be ordered to be paid: Provided always, that the said sum so ordered to be paid by way of costs shall not in any case exceed the sum of 20s. (b): Provided also, that such order for the payment of costs as aforesaid may be made in any case, notwithstanding any party shall have given notice of his intention to appeal against any decision of the revising barrister in the same case; but in case of such appeal the said order for the payment of costs shall be suspended, and shall abide the event of such appeal, unless the Court of appeal shall otherwise direct; but no appeal shall be allowed or entertained against or only in respect of any such order for the payment of costs: Provided also, that whenever any revising barrister shall have made any such order for the payment of any sum of money for costs by any person who shall have made any objection as aforesaid, it shall not be lawful for the said barrister to hear or admit proof of any other objection or notice of objection made or signed by the same person until the sum of money so ordered to be paid by him for costs be paid to the person entitled to receive the same, or deposited in the hands of the said barrister in Court, for the use of the person so entitled.

Orders for costs.

By the 28 & 29 Vict. c. 36, s. 13, every order for costs by a revising barrister, whether revising the lists of a county, city, or borough, in the case of any objection, shall be made before his proceeding to hear any objection stated in any other notice of objection, and such order may be delivered either to the person to whom the costs shall therein be ordered to be paid, or to some other person on his behalf: Provided always, that

(a) By the 28 Vict. c. 36, s. 15, the revising barrister must read out the names expunged and inserted, and all corrections and insertions before sign-

ing any list.

(b) The sum is now £5. See the 28 Vict. c. 36, s. 14, *post*, 1135.

this section shall not be taken to repeal the last proviso contained in the forty-sixth of the principal Act.

Sect. 14. The sum ordered to be paid by way of costs shall not upon any one vote exceed the sum of £5, and the forty-sixth section of the principal Act shall be read as if the words "five pounds" had been substituted therein for the words "twenty shillings."

Sect. 15. It shall be the duty of every revising barrister, whether revising the lists of a county, city, or borough, before signing any page of any list, as required by the forty-first section of the principal Act, to read out audibly in open Court the names expunged and inserted by him therein, and all corrections and insertions made by him.

Sect. 16. It shall be lawful for any revising barrister, whether revising the lists of a county, city, or borough, to order any person to be removed from his Court who shall interrupt the business of the Court, or refuse to obey his lawful orders in respect of the same; and it shall be the duty of the chief constable, commissioner, or chief officer of police of the county, city, borough, or place in which the Court is held, to take care that an officer of police do attend that Court during its sitting, for the purpose of keeping order therein, and to carry into effect any order of the revising barrister aforesaid.

By the 6 Vict. c. 18, s. 47, the said lists of voters for each county, signed as aforesaid, shall be forthwith transmitted by the revising barrister to the clerk of the peace of the same county, and the clerk of the peace shall keep the said lists among the records of the sessions, and shall forthwith cause the said lists to be copied and printed in a book or books, arranged with the names in each parish or township in strict alphabetical order, according to the surnames, and with every polling district in alphabetical order, and with every parish or township within such polling district likewise in the same order, and shall, after the last list for each polling district, insert a list in like alphabetical order of all persons whose names shall not appear in any of the said lists for such polling district, but who shall in manner hereinbefore mentioned have been registered by the revising barrister to vote at the polling place of such last-mentioned district, and shall in the said book prefix to every name its proper number, beginning the numbers from the first name, and continuing them in a regular series down to the last name: Provided always, that a number as aforesaid shall be prefixed to the name of every person in every such list inserted after the last list for any polling district as aforesaid; and no number, but an asterisk only, shall be prefixed to the name of the same person in the list of the parish or township in which his name originally appeared; and every such book shall be printed and arranged in such manner and form that the list of voters of and for each and every separate parish or township contained therein may be conveniently and completely cut out or detached from all the other lists of voters contained in the same book, so that all the lists for every or any polling place, or the list of every or any single parish or township, may be ready for the purposes of this Act or for sale; and the said clerk of the peace shall sign and deliver the said book or books on or before the last day of November (a) in the then current

4. *Revising Barristers' Duties, etc.*

Such costs in no case to exceed £5.

Revising barrister to read out names expunged and inserted.

Power to remove persons from Court who interrupt proceedings.

County lists to be transmitted to clerk of the peace, and to be by him copied into a book.

Clerk of peace to sign and deliver copy to sheriff.

(a) This provision for the delivery of the register to the sheriff before 30th November, is directory only, and a failure to comply with it does not avoid the register. Till signed by the clerk of the peace and delivered to the sheriff, it is not the final register. Until that is done, therefore, the clerk of the peace may

correct any clerical or typographical error in it, so as to make it correspond with the list as delivered to him by the barrister. (*Brumfitt v. Bremner*, K. & G. 352; 30 L. J. C. P. 33.)

By the 30 & 31 Vict. c. 102, s. 38, the forty-seventh and forty-eighth sections of the Act of the sixth year of the reign of her present Majesty,

**4. Revising
Barristers'
Duties, etc.**

year to the sheriff of the county, to be by him and his successors in the office of sheriff safely kept, for the purposes hereinafter and in the said recited Act mentioned.

Borough lists to be delivered to town clerks, and copied into a book.

Town clerk to sign and deliver same to returning officers.

Books to be re-register of voters for one year.

Copies of registers to be printed for sale.

Assessors and other officers neglecting to attend when summoned by revising barrister, liable to be fined.

Power to barristers to fine over-

Sect. 48. That the lists of voters for each city or borough, signed as aforesaid, shall be forthwith delivered by the revising barrister to the town clerk of the same city or borough; and the said town clerk shall forthwith cause the said lists to be copied and printed in a book; and in the said book the said lists shall be arranged and every name numbered according to the directions aforesaid with regard to the county lists, so far as the same are applicable; and the said town clerk shall sign and deliver the said book on or before the said last day of November (a) to the returning officer of the same city or borough, to be by him and his successors as returning officer safely kept for the purposes hereinafter mentioned.

Sect. 49. That the said printed book or books, so signed as aforesaid by the clerk of the peace or town clerk respectively, and given into the custody of the sheriff of any county, or the returning officer of any city or borough, as the case may be, shall be the register of persons entitled to vote at any election of a member or members to serve in Parliament which shall take place in and for the same county, city, or borough respectively, between the last day of November in the year wherein such register shall have been made and the first day of December in the succeeding year (b): Provided always, that the register of electors now in force shall be the register in force until the first day of December in the year 1843; and the clerk of the peace of every county, and the town clerk of every city or borough respectively, shall keep printed copies of the said register for such county, city, or borough, and shall deliver such copies of such register, or of any part thereof, to any person applying for the same, upon payment of a price after the rate contained in the table numbered (2) in the schedule (D.) to this Act annexed; Provided always, that no person shall be entitled to a copy of any part of any register relating to any parish or township without taking or paying for the whole that relates to such parish or township.

Sect. 50. That any assessor or collector of taxes, or other officer, or any overseer or overseers of the poor, or other persons having the custody of any poor-rate book for any past year, or any assistant overseer or relieving officer, who shall wilfully refuse or neglect, when duly required by summons under the hand of any revising barrister, to attend before such barrister at any Court to be holden as aforesaid, according to the exigency of such summons, shall, upon proof before him of the service of such summons, be liable to pay by way of fine for every such offence a sum of money not exceeding £5 nor less than 20s., to be imposed by and at the discretion of the said barrister holding any such Court as aforesaid.

Sect. 51. That any overseer of any parish or township who shall wilfully refuse or neglect to make out any list, or who shall wilfully neglect

chapter eighteen, relating to the transmission and delivery of the book or books containing the lists of voters to the sheriff and returning officer, shall be construed as if the word "December" were substituted in those sections for the word "November," and the said book or books shall be the register of persons entitled to vote for the county or borough to which such register relates at any

election which takes place during the year commencing on the first day of January next after such register is made, and the register of electors in force at the time of the passing of this Act shall be the register in force until the first day of January, 1868.

(a) See note (a), *ante*, 1135.

(b) See the 30 & 31 Vict. c. 102, s. 38, *ante*, 1135, n. (a).

to insert therein the name of any person who shall have given due notice of claim, or who in making out the list of voters for any city or borough shall wilfully and without any reasonable cause omit the name of any person duly qualified to be inserted in such list, or who shall wilfully and without reasonable cause insert in such list the name of any person not duly qualified, or who shall wilfully refuse or neglect to publish any notice or list, or copy of the part of the register of voters relating to his parish or township, at the time and in the manner required by this Act, or who shall wilfully refuse or neglect to deliver to the clerk of the peace the copy of the lists of claimants and of persons objected to, and the copies of the register, as required by this Act, or who shall wilfully refuse or neglect to deliver to the town clerk of the city or borough the copies of the several lists as required by this Act, or who shall wilfully refuse or neglect to attend the Court for revising the lists of voters of his parish or township, or to attend any revising barrister when required by any summons as aforesaid, or who shall wilfully refuse or neglect to deliver to the barrister or barristers holding any such Court the several lists to be made out by them as aforesaid, or who shall be wilfully guilty of any other breach of duty in the execution of this Act, shall for every such offence be liable to pay by way of fine a sum of money not exceeding £5 nor less than 20s., to be imposed by and at the discretion of any barrister holding any Court for the revision of any list of the parish or township of such overseer: Provided always, that nothing herein contained as to any fine as aforesaid shall affect or abridge any right of action against any overseer or other person liable to any fine as aforesaid, or any liability such overseer or other person may incur under or by virtue of this Act or the said recited Act.

4. *Revising
Barristers'
Duties, etc.*

seers for neglect
of duty.

Sect. 52. That every revising barrister, when and so often as he shall impose any such fine as aforesaid, shall at the same time in open Court, by an order in writing under his hand stating the sum payable for such fine, direct by and to whom and when the same shall be paid, and the person to whom the said sum shall be so ordered to be paid shall receive the same, and in every case where the offence for which the said fine shall have been so imposed shall relate to the formation of the register of voters for any county, he shall pay over the sum so received by him to the clerk of the peace of the same county, and in every case where such offence shall relate to the formation of the register of voters for any city or borough, he shall pay over the sum so received by him to the town clerk of the same city or borough, or to the said secondaries, as the case may require.

Fines, to whom
payable, and to
what purpose to
be applied.

Sect. 53. That the clerk of the peace of every county and the town clerk of every city or borough respectively shall keep an account of all moneys to be received by him or them for or on account of the sale of any copies of the register as aforesaid, or for or by way of fine imposed as aforesaid; and the said clerk of the peace shall pay over or account for all such moneys received by him to the treasurer of the same county, to be applied in aid of the county rate; and the said town clerk shall pay over or account for all such money so received by him to and amongst the overseers of the several parishes and townships within every city or borough; and the share of each parish or township shall be calculated as nearly as may be according to the same relative proportion as the number of persons whose names shall appear in the list of the said parish or township shall bear to the number in all the other lists upon the same register; and the said moneys, together with all moneys received by any overseers from the sale by them of any lists, shall be paid and applied by the said overseers in aid of the moneys collected for the relief of the poor.

Clerk of peace
and town clerk to
account for and
pay over all
moneys received
by them.

Sect. 54. That an account of all expenses incurred by any clerk of the

Expenses of

4. *Revising Barristers' Duties, etc.*

clerks of peace,
how to be de-
frayed.

Expenses of
town clerks and
returning officers,
how to be de-
frayed.

peace of any county in carrying into effect the provisions of this Act (a) shall be laid before the justices of the peace at the next quarter sessions after such expenses shall have been incurred, and the said justices of the peace shall make their order upon the treasurer of the said county for the payment of such expenses, or such part thereof as they shall allow to the said clerk of the peace, out of the public stock of the said county.

Sect. 55. That all the expenses incurred by any town clerk or returning officer of any city or borough in carrying into effect the provisions of this Act (a) shall be defrayed out of the moneys to be collected for the relief of the poor in the several parishes and townships within the same city or borough; and the sum to be contributed by every such parish or township shall be calculated, as nearly as may be, according to the same relative proportion as the number of persons whose names shall appear in the list of the said parish or township shall bear to the number in all the other lists upon the same register; and an account of all the said expenses so incurred, and also an account of the sum to be contributed for defraying the same by each parish or township as aforesaid, shall, as soon as may be after the said expenses shall have been so incurred, be laid before the common council or town council of the said city or borough, or if there be no such council in any city or borough, then before the justices of the peace at the quarter sessions to be holden in and for the county in which the same city or borough is situate; and the said council or the said justices respectively shall, when they allow the said accounts, make and give to the said town clerk a certificate of the total sum allowed by such council or justices in respect of the said expenses, and also a certificate of the sum to be paid by and as the contribution of each of the said parishes or townships towards defraying the same; and thereupon it shall be lawful for the overseers of every such parish or township, and they are hereby required, out of the first moneys to be collected for the relief of the poor, to pay the sum in such certificate mentioned to be paid by and as the contribution of the said parish or township to the said town clerk.

Definition of
"expenses of re-
gistration."

By the 30 & 31 Vict. c. 102, s. 31, the word "expenses" contained in the sections fifty-four and fifty-five of the said Registration Act of the session of the sixth year of the reign of her present Majesty, chapter eighteen, shall be deemed to and shall include and apply to all proper and reasonable fees and charges of any clerk of the peace of any county, or of any town clerk of any city or borough, to be hereafter made or charged by him in any year for his trouble, care, and attention in the performance of the services and duties imposed upon him by the same Act or by this Act, in addition to any money actually paid or disbursed by him for or in respect of any such services or duties as aforesaid.

Meaning of the
words "town
clerk" in certain
cases.

By the 6 Vict. c. 18, s. 56, throughout this Act the words "town clerk" shall not be understood to mean or apply to the town clerks of the cities of London or Westminster, or to the town clerk of the borough of Southwark, but throughout this Act by the words "town clerk" shall be understood in regard to the city of London the secondaries of the said city, and in regard to the city of Westminster the high bailiff of the

(a) These words only extend to money out of pocket, and do not include remuneration for trouble, loss of time, etc. (*R. v. Governors of the Poor of Hull*, 2 E. & B. 182.) For anything, therefore, that the clerk of the peace can do himself, or with his

usual staff of clerks, e.g. in copying and arranging parish lists, he is not entitled to be paid, but for any extra clerks employed, or for work that cannot be done in his office, e.g. printing, he may be reimbursed. (*R. v. Alday*, 26 L. J., Q. B. 292.)

said city, and in regard to the borough of Southwark the high bailiff of the said borough.

Sect. 57. Enacts that an account of all expenses incurred by the overseers of every parish or township in carrying into effect the provisions of this Act shall be laid before the revising barrister at the Court at which the list of voters for such parish or township shall be revised; and the said barrister shall sign and give to the said overseers a certificate of the sum which he shall allow to be due to them in respect of the said expenses; and it shall be lawful for the said overseers to receive the sum so certified to be due to them from and out of the first moneys thereafter to be collected for the relief of the poor in the same parish or township.

By the 31 & 32 Vict. c. 58, s. 31, all expenses properly incurred by an overseer in pursuance of this Act shall be deemed to be expenses properly incurred by him in carrying into effect the provisions of the principal Act, and any expense incurred by any relieving officer in attending a revising barrister in pursuance of this Act (the amount to be certified by the revising barrister) shall be deemed to be expenses properly incurred by him in the execution of his duty as relieving officer, and shall be defrayed accordingly.

Sect. 32. The certificate given to the overseers by the revising barrister under section fifty-seven of the principal Act for the expenses incurred by them in carrying into effect the provisions of the Registration Acts shall be final and conclusive; provided nevertheless, that such certificate shall be signed by the revising barrister in open Court, and any ratepayer present shall have a right to inspect the account of expenses delivered in by the overseers, and to object to any item or items included therein, before such account is allowed by the revising barrister, who shall hear any such objection and make a decision respecting the same.

By the 6 Vict. c. 18, s. 58, notwithstanding anything in the said recited Act contained, it shall not be necessary for or required of any person claiming or upon giving notice of any claim as herein or in the said recited Act mentioned to pay or cause to be paid to the overseer of any parish or township the sum of 1s., or any other sum; nor shall any notice of claim as aforesaid be invalid by reason of such or any sum not having been paid; and no person whose name shall be upon any register of voters for any city or borough shall be therefore liable to the payment of 1s. annually, or of any other sum on that account.

Sect. 59 relates to the remuneration of revising barristers.

Sect. 71. That in case any sum of money, by the order of any revising barrister as aforesaid directed to be paid by any person by way of fine or for costs, shall not be paid according to the terms of such order, it shall be lawful for any justice of the peace, and he is hereby required, upon proof before him that a true copy of the said order hath been served upon or left at the usual place of abode of the person in the said order directed to pay such sum, and that the said sum hath been demanded of such person, and that he hath refused or neglected to pay the same, by warrant under his hand and seal, to order the said sum of money, together with the costs of and attending the said warrant, to be levied by distress and sale of the goods and chattels of such person so making default, which may be found within the jurisdiction of the said justice; and the overplus, if any, after the said sum of money and costs and charges of such distress and sale are deducted, shall be returned, upon demand, to the owner of the said goods and chattels provided always, that no *certiorari*, or other writ or process for the removal of any such order or warrant, or of any order or warrant to be made or issued on account of a false charge of personation in the manner hereinafter provided, or any proceeding thereon respectively, into

4. *Revising Barristers Duties, etc.*

Expenses of overseers, how to be defrayed.

Expenses of overseers and relieving officers.

Certificate of revising barrister to be conclusive.

No payment necessary by persons making claim in counties; nor by persons on register in cities and boroughs.

Remuneration of revising barristers.

Costs and fines to be recovered by distress and sale of the parties' goods.

No *certiorari* allowed.

5. Proceedings prior to and at Elections for Counties.

Recovery of expenses by town clerks and returning officers.

any of her Majesty's Courts at Westminster, shall be allowed or granted.

By the 31 & 32 Vict. c. 58, s. 23, whereas it is expedient to provide a summary remedy for the recovery by town clerks and returning officers of sums of money due to them in respect of expenses incurred in pursuance of the Registration Acts: be it enacted, that if the overseers of any parish or township refuse or neglect to pay to the town clerk or returning officer of any borough, out of the first moneys to be collected for the relief of the poor, any contribution or sum required to be paid to him by the fifty-fifth section of the principal Act, or any Act amending the same, or any part of such contribution or sum, it shall be lawful for any justice of the peace for the county or place within which such parish or township is wholly or in part situate, upon information and complaint in writing, and after seven days' notice in writing to be served upon such overseers or one of them, by warrant under his hand to levy such contribution or sum by distress and sale of the goods of the offender or offenders, together with all costs occasioned by the making of such complaint, service of such summons, and the obtaining and executing such warrant.

V. Proceedings prior to and at the Election of Members for Counties.

Sheriffs of the divided counties to fix the time and preside at elections.

By 2 Will. 4, c. 45, s. 61, the sheriffs of Yorkshire and Lincolnshire (*a*), and the sheriffs of the counties divided by this Act, are to cause proclamation to be made of the several days fixed for the election of a knight or knights of the shire for the several ridings, parts, and divisions of their respective counties, and shall preside at the election by themselves or their lawful deputies.

Place of election.

By the 7 & 8 Will. 3, c. 25, s. 3, upon every election to be made of any knight or knights of the shire to serve in this present or any future Parliament, the sheriff of the county where such election shall be made, shall hold his county Court for the same election at the most public and usual place of election within the said county, and where the same has most usually been for forty years last past.

By 23 Hen. 6, c. 14, s. 2, the sheriff is to open the election on the day appointed, between the hours of eight and eleven in the forenoon.

Proclamation for silence having been made, the returning officer reads the writ.

Returning officer to be sworn.

By 2 Geo. 2, c. 24, s. 3, before the returning officer shall proceed to the election, he shall, immediately after reading of the writ, take and subscribe the following oath, to be administered by a justice of the peace, or in his absence, by any three electors:—

I, A. B., do solemnly swear, that I have not, directly or indirectly, received any sum or sums of money, office, place, or employment, gratuity or reward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself, or any other person, to my use or benefit or advantage, for making any return at the present election of members to serve in Parliament; and I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes.

Which oath so taken shall be entered amongst the records of the sessions, etc.

(*a*) See the 24 & 25 Vict. c. 112, and the 30 & 31 Vict. c. 102, s. 32, and schedule (D.).

Though the returning officer is obliged to take the bribery oath on opening the election, the same necessity does not apply to his deputies.

The candidates are then nominated and seconded, and if the election be not determined on view, and a poll be demanded,

By 2 Will. 4, c. 45, s. 62, at every contested election of a knight or knights to serve in any future Parliament for any county, or for any riding, parts, or division of a county, the polling shall commence at nine o'clock in the forenoon of the next day but two after the day fixed for the election, unless such next day but two shall be Saturday or Sunday, and then on the Monday following, at the principal place of election, and also at the several places to be appointed as hereinafter directed for taking polls.

By the 16 & 17 Vict. c. 15, s. 2, at every contested election of a knight or knights to serve in any Parliament after the 1st day of October, 1853, for any county, or for any riding, parts, or division of a county, the polling shall continue for one day only, and the poll shall commence at eight o'clock in the morning, and be kept open until five in the afternoon of such day.

By the 2 Will. 4, c. 45, s. 63, the respective counties in England and Wales, and the respective ridings, parts, and divisions of counties, shall be divided into convenient districts for polling, and in each district shall be appointed a convenient place for taking the poll at all elections of a knight or knights of the shire to serve in any future Parliament, and such districts and places for taking the poll shall be settled and appointed by the Act (a) to be passed in this present Parliament for the purpose of settling and describing the divisions of the counties enumerated in the schedule marked (F.) to this Act annexed; provided that no county, nor any riding, parts, or divisions of a county, shall have more than fifteen districts and respective places appointed for taking the poll for such county, riding, parts, or division (b).

Sect. 64. At every contested election for any county, or riding, parts, or division of a county, the sheriff, under-sheriff, or sheriff's deputy, shall, if required thereto, by or on behalf of any candidate, on the day fixed for the election, and if not so required, may, if it shall appear to him expedient, cause to be erected a reasonable number of booths for taking the poll at the principal place of election, and also at each of the polling places so to be appointed as aforesaid, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the several parishes, townships, and places for which such booth is respectively allotted; and no person shall be admitted to vote at any such election in respect of any property situate in any parish, township, or place, except at the booth so allotted for such parish, township, or place, and if no booth shall be so allotted for the same, then at any of the booths for the same district; and in case any parish, township, or place, shall happen not to be included in any of the districts to be appointed, the votes in respect of property, situate in any parish, township, or place so omitted shall be taken at the principal place of election for the county, or riding, parts, or division of the county, as the case may be.

By 6 & 7 Will. 4, c. 102, intituled "An Act for rendering more easy the taking the Poll at County Elections," it is enacted, by section one, that it shall be lawful for his Majesty, by and with the advice of his privy council, from time to time hereafter, on petition from the justices of any

5. *Proceedings prior to and at Elections for Counties.*

Commencement and continuance of polls at county elections.

Counties to be divided into districts for polling.

Polling booths for counties.

No voter to poll out of the district where his property lies.

Additional polling places may be appointed upon petition from justices in quarter sessions assembled.

(a) 2 & 3 Will. 4, c. 64.

7, *post*, 1142; and the 30 & 31 Vict. c. 102, s. 34, *post*, 1143.

(b) But see the 7 Will. 4, c. 102, s. 1, *infra*; the 16 & 17 Vict. c. 68, s.

5. *Proceedings prior to and at Elections for Counties.*

county, riding, parts, or division in England or Wales, in quarter sessions assembled, representing that the number of polling places for such county, riding, parts, or division is insufficient, and praying that the place or places mentioned in the said petition may be a polling place or polling places for the county, riding, parts, or division of the county within which such place or places is or are situate, to declare that any place or places mentioned in the said petition shall be a polling place or polling places for that county, riding, parts, or division, and that the justices of the peace for such county, riding, parts, or division, in quarter sessions or some special sessions assembled, as in the said Act mentioned, shall conformably to the said Act divide such county, riding, parts, or division into convenient polling districts, and assign one of such districts to each polling place; and every such direction or order for creating additional polling places shall be certified under the hand of one of the clerks in ordinary of his Majesty's privy council, and when so certified shall be published in the *London Gazette*, and shall be of the same force and effect as if the same had been made by the authority of Parliament.

Notices to be given previous to any petition being made.

Sect. 2. No such petition as aforesaid shall be made by such justices so assembled unless a notice in writing shall have been delivered one month at the least before the holding of such quarter sessions, to the clerk of the peace of the county, riding, part, or division wherein the same are held, signed by two justices of the peace for such county, riding, part, or division, and residing therein, or by ten inhabitants, being registered voters for such county, riding, part, or division, which notice shall state that the Court will, when such sessions are held, be moved to make such petition, nor unless the clerk of the peace shall, ten days at the least before the holding of such sessions, have caused a copy of such notice to be inserted twice at the least in two of the newspapers of such county, riding, part, or division, if two newspapers are published therein, or, if not, in a newspaper published or commonly circulated therein, together with a notice of the day upon which such quarter sessions will be held: Provided always, that when such motion is made, any person objecting to the same shall be heard by such Court against the same or any part thereof, if he thinks fit.

As to the number of polling booths to be provided.

Sect. 3. Provided always, and be it enacted, that at every contested election of a knight or knights to serve in any future Parliament for any county, or for any riding, parts, or division of a county, as many polling booths shall be provided at each polling place as will allow one for every four hundred and fifty electors whose names appear upon the registry of the said county or division of a county, and who may lawfully vote at such polling place; and the high sheriff shall provide the same accordingly.

Substitution of polling places on petition of justices.

By the 16 & 17 Vict. c. 68, s. 7, it shall be lawful for her Majesty, by and with the advice of her privy council from time to time hereafter, on petition from the justices in quarter sessions assembled of any county, riding, parts, or division of any county other than any county of a city or of a town in England and Wales, representing that it would be expedient that any polling place or places mentioned in the said petition should cease to be such, and that any other place or places mentioned in the said petition should be substituted in lieu thereof, and praying that such alteration and substitution might be made, to declare that the said alteration and substitution shall be made in respect of all or any of the places mentioned in the said petition; and the said declaration shall be certified under the hand of one of the clerks in ordinary of her Majesty's privy council, and when so certified shall be published in the *London Gazette*, and shall then be of the same force and effect as if the same had been expressly made by the authority of parliament.

Sect. 8. Provided always that the notice of and proceedings to be had upon any such petition shall be according to the provisions of the second

section of the one hundred and second chapter of the statute of the sixth and seventh years of king William the fourth in respect of the petition therein mentioned.

By the 30 & 31 Vict. c. 102, s. 34, in every county the justices of the peace having jurisdiction therein or in the larger part thereof, assembled at some Court of general or quarter sessions, or at some adjournment thereof, held after the passing of this Act, may, if they think convenience requires it, divide such county into polling districts, and assign to each district a polling place, in such manner as to enable each voter, so far as practicable, to have a polling place within a convenient distance of his residence; and the justices shall advertise, in such manner as they think fit, a description of the polling districts so constituted by them, and the name of the polling place assigned to each district, and shall name the polling places at which the revising barristers are to hold their Courts, and no revising barrister shall be obliged to hold his Courts at any polling places not so named: Provided that the justices of the peace for the Isle of Ely assembled as aforesaid shall carry into effect the provisions of this section so far as regards the said Isle of Ely; but nothing herein contained shall affect the powers conferred by any other Act of Parliament of altering polling places or polling districts, or of creating additional polling places or districts.

By the 31 & 32 Vict. c. 58, s. 18, the power of dividing their county into polling districts, and assigning to each district a polling place, vested in the justices of the peace by the said thirty-fourth section of the "Representation of the People Act, 1867," may be exercised by such justices from time to time and as often as they think fit; and the said power of dividing a county into polling districts shall be deemed to include the power of altering any polling district or polling districts.

By the 5 & 6 Will. 4, c. 36, s. 8, where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceeding shall consist of the nomination of candidates or of the taking the poll, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination or the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the nomination or with the taking the poll, as the case may be, at the place or places at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling at such election, within the meaning of this Act; and whenever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and the poll books delivered or transmitted to such sheriff or other returning officer, anything hereinbefore or in any other statute to the contrary notwithstanding: Provided always, that this Act shall not be taken to authorize an adjournment to a Sunday; but that in every case in which the day to which the adjournment would otherwise be made shall happen to be a Sunday, Good-Friday, or Christmas Day, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made.

5. Proceedings prior to and at Elections for Counties.

Power of justices to divide county into polling districts, etc.

Adjournment of nomination or poll in case of riot.

5. *Proceedings prior to and at Elections for Counties.*

By the 16 & 17 Vict. c. 15, s. 3, the provisions concerning the adjournment of the poll in cases of riot or open violence, and other the provisions of section seventy of the said Act of the second year of king William the fourth shall be and remain applicable to every such contested election as aforesaid, as if the said section were re-enacted in this Act, the words "the day of polling" being substituted therein for the words "one of the two days of polling."

It has been held that a returning officer may commit to safe custody those who disturb the proceedings, in order that they may be taken before a magistrate. (*Spilsbury v. Micklethwaite*, 1 Taunt. 146.)

Candidates, or persons proposing a candidate without his consent, to be at the expense of booths and poll clerks.

Limitation of expense.

Deputies and poll clerks.

By the 2 Will. 4, c. 45, s. 71, all booths erected for the convenience of taking polls shall be erected at the joint and equal expense of the several candidates, and the same shall be erected by contract with the candidates, if they shall think fit to make such contract, or if they shall not make such contract, then the same shall be erected by the sheriff or other returning officer at the expense of the several candidates as aforesaid, subject to such limitation as is hereinafter next mentioned; (that is to say), that the expense to be incurred for the booth or booths to be erected at the principal place of election for any county, riding, parts, or division of a county, or at any of the polling places so to be appointed as aforesaid, shall not exceed the sum of £40 in respect of any one such principal place of election or any one such polling place; and that the expense to be incurred for any booth or booths to be erected for any parish, district, or part of any city or borough, shall not exceed the sum of £25 in respect of any one such parish, district, or part; and that all deputies appointed by the sheriff or other returning officer shall be paid each two guineas by the day, and all clerks employed in taking the poll shall be paid each one guinea by the day, at the expense of the candidates at such election; provided always, that if any person shall be proposed without his consent, then the person so proposing him shall be liable to defray his share of the said expenses in like manner as if he had been a candidate: Provided also, that the sheriff or returning officer may, if he shall think fit, instead of erecting such booth or booths as aforesaid, procure or hire and use any houses or other buildings for the purpose of taking the poll therein, subject always to the same regulations, provisions, liabilities, and limitations of expense as are hereinbefore mentioned with regard to booths for taking the poll.

Extra accommodation in boroughs.

In *Muntz v. Sturge*, 8 M. & W. 302, it was decided that the word candidate in the above section applied only to one who went to the poll, and that the defendant, who had been put in nomination, but afterwards declined to go to the poll, was not liable for a share of these expenses, for which the returning officer had sued him.

By the 16 & 17 Vict. c. 68, s. 6, no poll at any election for members of Parliament in England and Wales shall be taken at any inn, hotel, tavern, public-house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing.

Rooms to be hired for taking polls wherever they can be obtained.

By the 30 & 31 Vict. c. 102, s. 37, at every contested election for any county or borough, unless some building or place belonging to the county or borough is provided for that purpose, the returning officer shall, whenever it is practicable so to do, instead of erecting a booth, hire a building or room for the purpose of taking the poll:

Where in any place there is any room the expense of maintaining which is payable out of any rates levied in such place, such room may, with the consent of the person or corporation having the control over the same, be used for the purpose of taking the poll at such place.

By the 2 Will. 4, c. 45, s. 72, the sheriff or other returning officer shall, before the day fixed for the election, cause to be made, for the use of each booth or other polling place at such election, a true copy of the register of voters, and shall under his hand certify every such copy to be true.

Sect. 73. Every deputy of a sheriff or other returning officer shall have the same power of administering the oaths and affirmations required by law, and of appointing commissioners for administering such oaths and affirmations as may by law be administered by commissioners, as the sheriff or other returning officer has by virtue of this or any other Act, and subject to the same regulations and provisions in every respect as such sheriff or other returning officer.

Sect. 75. All laws, statutes, and usages now in force respecting the election of members to serve in Parliament for that part of the United Kingdom called England and Wales, shall be and remain, and are hereby declared to be and remain, in full force, and shall apply to the election of members to serve in Parliament for all the counties, ridings, parts, and divisions of counties, cities, and boroughs, hereby empowered to return members, as fully and effectually as if the same respectively had heretofore returned members, except so far as any of the said laws, statutes, or usages are repealed or altered by this Act, or are inconsistent with the provisions thereof.

Sect. 101. That throughout this Act, in the construction thereof, except there be something in the subject or context inconsistent with or repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts or division of a county, respectively returning a knight or knights of the shire to serve in Parliament; and the words "city or borough" shall extend to and mean any city, borough, town corporate, cinque port, district, or place within England and Wales returning a member or members to serve in Parliament, other than counties at large, and ridings, parts, and divisions of counties at large, and to every place sharing in the election of a member for any city or borough, and shall also include the town of Berwick-upon-Tweed; that the words "clerk of the peace" shall comprehend and apply to any deputy or other person executing the duties of such clerk of the peace; and the words "town clerk" shall, except in regard to the cities of London and Westminster and the borough of Southwark, extend to and mean any person executing the duties of town clerk, or if in any city or borough there shall be no such officer as town clerk, then to any officer executing the same or like duties as usually devolve upon the town clerk, or if in any city or borough there be no such person, then to the returning officer of such city or borough, or to such person as the returning officer may appoint for that purpose, which he is hereby authorized to do; and the words "barrister" or "barristers" shall respectively be taken to include a serjeant or serjeants-at-law; and the words "returning officer" shall apply to every person or persons to whom by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "parish or township" shall extend to and mean every parish, township, village, hamlet, district, or place maintaining its own poor; and the words "overseers" or "overseers of the poor" shall extend to and mean all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called (a), and in whatsoever manner they may be appointed, and that all matters by this Act directed to be done by the overseers of a parish or township may be

5. *Proceedings prior to and at Elections for Counties.*

Houses may be hired for polling in, instead of booths.

Certified copies of the register of voters for each booth.

Powers of deputies of returning officers.

All election laws to remain in force, except where superseded by this Act.

Interpretation clause.

Meaning of the word "county".

"city or borough:"

"clerk of the peace:"

"town clerk:"

"barrister:"

"returning officer:"

"parish or township:"

"overseers" or "overseers of the poor."

(a) This extends to assistant overseers. (*Points v. Attwood*, 6 C. B. 38.)

5. *Proceedings prior to and at Elections for Counties.*

Provision as to service of notices.

Justices, sessions, clerks of the peace, and treasurers of counties.

Misnomer not to vitiate.

"Oath."
Singular.

Plural.

Sheriff's deputies, custody of poll books, and final declaration of the poll.

lawfully done by the major part of such overseers; and that wherever any notice is by this Act required to be given or sent to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business, or shall be sent by the post, free of postage, or the postage thereof being first paid, addressed to the overseers of the particular parish or township, naming the parish, or township, and the county, city, or borough respectively, to which the notice to be so sent may relate, without adding any place of abode of such overseers; and that wherever by this Act any notice is required to be given or sent to any person or persons whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post, free of postage, or the postage thereof being first paid, addressed with a sufficient direction to the person or persons to whom the same ought to be given or sent, at his or their usual place of abode; and that all provisions in this Act relative to any matters to be done by or with regard to justices of the peace for counties, or sessions of the peace for counties, or clerks of the peace for counties, or treasurers of counties, shall extend to the justices, sessions, clerks of the peace, and treasurers of the several ridings of Yorkshire and parts of Lincolnshire; and that the town clerk for the time being for the borough of Newport in the Isle of Wight shall for the purposes of this Act be deemed and taken to be the clerk of the peace for the county of the Isle of Wight; and that all the said respective justices, sessions, and clerks of the peace shall have power to do the several matters required by this Act, as well within places of exclusive jurisdiction as without; and that no misnomer or inaccurate description of any person, place, or thing named or described in any schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in anywise prevent or abridge the operation of this Act with respect to such person, place, or thing, provided that such person, place, or thing shall be so denominated in such schedule, list, register, or notice as to be commonly understood; and that the word "oath" shall include affirmation, where by law such affirmation is required or allowed to be taken in place of an oath; and where the subject or context requires it, every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things.

By the 2 Will. 4, c. 45, s. 65, the sheriff shall have power to appoint deputies to preside and clerks to take the poll at the principal place of election, and also at the several places appointed for taking the poll for any county, or any riding, parts, or division of a county.

By the 16 & 17 Vict. c. 15, s. 2, the poll clerks to be employed at the principal place of election and other places, shall, at the final close of the day's poll, enclose and seal their several books, and shall publicly deliver them, so enclosed and sealed to the sheriff, under sheriff, or sheriff's deputy presiding at such poll, and every such deputy who shall have received any such poll books, shall forthwith deliver or transmit the same, so enclosed and sealed, to the sheriff or his under sheriff, who shall receive and keep all the poll books unopened, until the reassembling of the Court on the day next but one after the close of the poll, unless such next day but one shall be Sunday, and then until the Monday following, when he shall openly break the seals thereon, and cast up the number of votes, as they appear on the said several books, and shall openly declare the state of the poll, and shall make proclamation of the member or members chosen not later than two o'clock in the afternoon of the said day, any statute to the contrary notwithstanding.

By the 30 & 31 Vict. c. 102, s. 39, the oath to be taken by a poll clerk shall hereafter be in the following form :

I, A. B., do hereby swear, that I will truly and indifferently take the poll at the election of members to serve in Parliament for the [borough or county] of

So help me God.

5. *Proceedings prior to and at Elections for Counties.*

Oath or affirmation, etc., to be taken by poll clerks.

Every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may, instead of taking the oath hereby appointed, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God."

On the election of an alderman of London three poll clerks were appointed. On the second day of the poll the Lord Mayor directed only one poll clerk to act during the remainder of the election: without any objection being raised. Lord *Tenterden*, in giving judgment, said, "The statute (11 Geo. 1, c. 18) does not require that the number of poll clerks first appointed should be continued throughout the election, if it be found greater than convenience requires." (*R. v. Lord Mayor of London*, 9 B. & C. 1.)

By the 2 Will. 4, c. 45, s. 66, in all matters relative to the election of knights or a knight of the shire to serve in any future Parliament for any county, or for any riding, parts, or division of a county, the sheriff of the county, his under sheriff or any lawful deputy of such sheriff, shall have power to act in all places having any exclusive jurisdiction or privilege whatsoever, in the same manner as such sheriff, under sheriff, or deputy may act within any part of such sheriff's ordinary jurisdiction.

Sheriff in county elections may act in places of exclusive jurisdiction.

The 6 Vict. c. 18, s. 80, reciting that by the said first-recited Act (viz. the 2 Will 4, c. 45, s. 58), it is enacted that certain questions might be put to every voter at the time of his tendering his vote in any election: and that it is expedient that all the provisions contained in the said recited Act touching and concerning the said questions, and administering and taking of any oath at the time of polling, should be repealed, and other provisions be enacted in lieu thereof; enacts, that the said provisions shall be and the same are hereby repealed.

Clause as to putting questions at the poll repealed.

By sect. 81 it is enacted, that in all elections whatever of a member or members to serve in Parliament for any county, riding, parts or division of a county, or for any city or borough in England or Wales, or the town of Berwick-upon-Tweed, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say,) that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them :

No inquiry at time of election, except as to identity of voter; and whether he has already voted.

1. *Are you the same person whose name appears as A. B. on the register of voters now in force for the county of [or, for the riding, parts, or division of the county of], or, for the city [or, borough] of [as the case may be] ?*
2. *Have you already voted, either here or elsewhere, at this election for the county of [or, for the riding, parts, or, division of the county of], or, for the city [or, borough] of [as the case may be] ?*

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanour, and shall and may be indicted and punished accordingly; and the returning

5. *Proceedings prior to and at Elections for Counties.*

Oath to be taken, if required.

officer or his deputy, or a commissioner or commissioners to be for that purpose by law appointed, shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form :

You do swear [or affirm, as the case may be], that you are the same person whose name appears as A. B. on the register of voters now in force for the county of _____ or, for the _____ riding, parts, or, _____ division of the county of _____ or, for the city or borough of _____ [as the case may be], and that you have not before voted, either here or elsewhere, at the present election for the county of _____ [or, for the _____ riding, parts, or _____ division of the county of _____] or, for the city or borough of _____ as the case may be].

So help you God.

Joseph C., a person entitled to vote at municipal elections, was by mistake entered on the burgess roll as James C., he voted by the name of James C. On motion for *quo warranto*, the vote was objected to, in the rule, on the ground that C. was not entitled to vote, and had fraudulently personated a person entitled to vote. Held, that neither objection was sustained. (*Reg. v. Thwaites*, 1 E. & B. 704; 22 L. J., Q. B. 238.)

No other oath to be taken.

Sect. 82. That, save as aforesaid, it shall not be lawful to require any voter at any election whatever of a member or members to serve in Parliament to take any oath or affirmation, either in proof of his freehold, or of his residence, age, or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding; nor to reject any vote tendered at such election by any person whose name shall be upon the register of voters in force for the time being, except by reason of its appearing to the returning officer or his deputy, upon putting such questions as aforesaid, or either of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the said questions or either of them, or to take the said oath, or make the said affirmation, or to take or make the oath or affirmation against bribery (a); and no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at any such election; any law, statute, or usage to the contrary notwithstanding.

No scrutiny to be allowed.

Construction of the first question.

With respect to the first of these two questions, it will be seen from the wording of it, that in effect the identity of the person actually registered is the object to be discovered: and it has been so decided by the committees of the House of Commons, as where on the list appeared the name of *John Morris*; and the voter answered the first question in the affirmative, but stated his name to be *William* instead of *John*, although the returning officer rejected the vote, the committee afterwards added it to the poll. (*New Windsor, K. & Omb.* 168, etc.) In such a case, therefore, the returning officer is bound to take the above explanation, and to receive it as an affirmative answer. It is likewise important to the voter so to explain, as his vote would be bad should he leave the misnomer uncorrected. "*Thomas Saunders* was struck off, having voted as *John Saunders*, the name which appeared on the register." (*C. & R.* 113.)

Returning officer.

The returning officer has no right to reject a voter whose name is upon the register for any other reasons than those specified; but if he does reject a person who in fact is disqualified, no action will lie against him,

(a) The 2 Geo. 2, c. 24, and the 43 Geo. 3, c. 74, which imposed this oath, are repealed by the 17 & 18

Vict. c. 102, schedule (A.), so far as electors taking the oath are concerned.

although he might be liable to an indictment for not performing his public duty. (*Pryce v. Belcher*, 4 C. B. 866.)

The oaths of qualification heretofore required to be taken at *Aylesbury* (by 44 Geo. 3, c. 60), *Coventry* (by 21 Geo. 3, c. 54, s. 7), *Cricklade* (by 22 Geo. 3, c. 31, s. 4), *East Retford* or *Bassetlaw* (by 11 Geo. 4 & 1 Will. 4, c. 74), *London* (by 11 Geo. 1, c. 18, ss. 1, 2, and 3), *New Shoreham* (by 11 Geo. 3, c. 55), and *Norwich* (by 3 Geo. 2, c. 8), are virtually dispensed with, by the 82nd sect. of the 6 Vict. c. 18.

And by sect. 6 of the 5 & 6 Will. 4, c. 36, it is enacted, that no elector at any election shall be required to take the oaths commonly called the oaths of allegiance, abjuration, and supremacy, nor any oath or oaths required to be taken by any Act of Parliament in lieu thereof, any law or statute to the contrary notwithstanding.

By the 2 Will. 4, c. 45, s. 59, any person whose name shall have been omitted from any register of voters, in consequence of the decision of the barrister who shall have revised the lists from which such register shall have been formed, may tender his vote at any election at which such register shall be in force, stating at the time the name or names of the candidate or candidates for whom he tenders such vote, and the returning officer or his deputy shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election.

The 6 Vict. c. 18, s. 79, enacts, that every future election for a member or members to serve in Parliament for any county, city, or borough, the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election: Provided always, that it shall not be lawful for any person to vote at any election for a member or members for any county where the qualification annexed to the name of such person shall have appeared annexed to his name in the preceding register, and such person, on the last day of July in the year in which such register so in force was formed, shall have ceased to have such qualification, or shall not have retained so much thereof as would have entitled him to have had his name inserted in such register: Provided also, that no person shall be entitled to vote at any future election for a member or members to serve in Parliament for any city or borough, unless he shall, ever since the thirty-first day of July in the year in which his name was inserted in the register of voters then in force, have resided and at the time of voting shall continue to reside within the city or borough, or place sharing in the election for the city or borough, in the election for which he shall claim to be entitled to vote, or within the distance thereof required by the said recited Act to entitle such person to be registered in any year.

Sect. 83. That if at any election of a member or members to serve in Parliament for any county, city, or borough, any person shall knowingly personate and falsely assume to vote in the name of any other person whose name appears on the register of voters then in force for any such county, city, or borough, whether such other person shall then be living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall be guilty of a misdemeanour, and on being convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

Sect. 84. That every person who shall aid, abet, counsel, or procure the commission of any such last-mentioned misdemeanour, shall be liable to be indicted and punished as a principal offender.

5. *Proceedings prior to and at Elections for Counties.*

Oaths.

Oaths of allegiance, supremacy, and abjuration, not to be taken.

Votes excluded from the register by the barrister may be tendered at elections, and recorded.

Register to be conclusive evidence of voter's retaining same qualification.

Proviso.

In cities and boroughs, a continued residence required to time of polling.

Persons personating voters to be guilty of a misdemeanour.

Aiders and abettors to be punished as principals.

5. Proceedings prior to and at Elections for Counties.

Agents may be appointed by candidates to detect personation at the time of polling.

Sect. 85. And for the more effectual detection of the personation of voters at elections, be it enacted, that it shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

Returning officer may order persons charged with personation to be taken into custody.

Sect. 86. That if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book.

Vote not to be rejected if questions answered in the affirmative.

Persons charged with personation to be taken before two justices.

Bail to be taken in certain cases.

Sect. 87. That every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged from custody: Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

If justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.

Sect. 88. That if on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in

whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanours.

Sect. 89. That if the said justices shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of £10 nor less than £5, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of her Majesty's superior Courts of record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

Sect. 90. That it shall and may be lawful for the high sheriff of any county, and for the mayor or returning officer of any city or borough, and he and they are hereby required, for the purposes aforesaid, to provide a sufficient attendance of constables or peace officers in each booth at the different polling places within their respective counties, cities, or boroughs.

By the 17 & 18 Vict. c. 102, s. 8, no person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding.

By the 6 Vict. c. 18, s. 91, that in case the vote of any person shall have been received, and any other person shall afterwards tender his vote as being registered in respect of the same qualification, stating at the time the name or names of the candidate or candidates for whom he tenders such vote, the returning officer, or his deputy, shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election; provided such person shall duly answer the questions hereinbefore authorized to be put to any voter at the time of tendering his vote.

5. Proceedings prior to and at Elections for Counties.

If justices are satisfied that the charge is unfounded, they are to order compensation.

If party falsely charged accepts compensation, no action to be brought.

Sheriffs and returning officers to provide constables.

Voters not (compellable) to serve as special constables during elections.

Duty of returning officer where vote has been received, and another party tenders in respect of same qualification.

5. *Proceedings prior to and at Elections for Counties.*

Liverymen of London to poll in the Guildhall.

For providing for the safe custody of poll books.

Sect. 92. That in the city of London the returning officer or officers shall take the poll or votes of such freemen of the said city, being liverymen of the several companies, as are entitled to vote at such election, in the Guildhall of the said city, and shall not be required to provide for them any booth or compartment, but shall take one poll for the whole number of such liverymen at the same place.

Sect. 93. And whereas it is enacted by the said first-recited Act (a), that at every contested election for any county, riding, or division of a county, city, or borough in England, except the borough of Monmouth, the sheriff, under sheriff, or returning officer should, on the day therein mentioned, after the close of the poll, openly break the seals on the several poll books, and cast up the number of votes as they appear on the said several books, and openly declare the state of the poll, and make proclamation of the member or members chosen, not later than the time therein mentioned: and whereas no adequate provision has been made for the safe custody and production of the said poll books subsequent to such declaration of the poll and proclamation of the members chosen at any contested election, in consequence whereof great mischief and expense have arisen in cases of disputed returns of members to serve in Parliament; be it therefore enacted, that at every contested election of a member or members to serve in Parliament for any county, riding, parts, or division of a county, or for any city or borough in England or Wales, or for the town of Berwick-upon-Tweed, the sheriff, under sheriff, or returning officer, after having declared the state of the poll, and made proclamation of the member or members chosen to serve in Parliament in the manner provided for by the said hereinbefore in part recited Act, shall forthwith enclose and seal up the several poll books, and tender the same to each of the candidates, to be sealed by them respectively; and in case any candidates shall neglect or refuse to seal the same, the sheriff, under sheriff, or returning officer shall thereupon indorse on one of the said poll books the fact of such neglect or refusal; and every such sheriff, under sheriff, or other returning officer shall, by himself or his agent, as soon as possible after such proclamation as aforesaid, deliver the same poll books, so sealed as aforesaid, to the clerk of the crown in the high Court of Chancery, or his deputy, or deliver the same, directed to the said clerk of the crown, to the postmaster or deputy postmaster of the city, town, or place wherein such proclamation shall have been made as aforesaid, who on receipt thereof shall give an acknowledgment in writing of such receipt to such sheriff, under sheriff, or returning officer, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment signed by such sheriff, under sheriff, or returning officer; and the said postmaster or deputy postmaster shall dispatch all such poll books, so sealed and directed as aforesaid, by the first post or mail after the receipt thereof, to the general post office in London; and the postmaster or postmasters general are hereby directed, immediately on receipt of such poll books, to convey the same to the crown office, and to deliver the same there, so sealed as aforesaid, to the said clerk of the crown or his deputy; and the said clerk of the crown or his deputy is hereby required to give to such postmaster or postmasters general, sheriff, under sheriff, returning officer, or agent delivering the same, a memorandum in writing, acknowledging the receipt of such poll books, and setting forth the day and hour when the same were delivered at the crown office; and the said clerk of the crown or his deputy is hereby required, immediately on receipt of such poll books, to register the same in the books of the said crown office, and to indorse thereon the day and hour upon which he received the same; and every such sheriff, under sheriff, or returning officer is hereby required, at the time of

transmitting such poll books as aforesaid through the post office, to address and forward a letter by the same post or mail to the said clerk of the crown, informing him of such transmission, and giving the number and description of such poll books so transmitted.

Sect. 94. That office copies, issued by the said clerk of the crown or his deputy, of such poll books, shall be taken in evidence in all Courts of law, in actions for bribery or personation, or for any other purpose whatsoever.

Sect. 95. That the said clerk of the crown shall keep and preserve the said several poll books, and shall deliver to any party applying for the same an office copy of all or any part of such poll books, on payment of a reasonable charge for writing the same, and shall also permit any party to inspect such poll books.

Sect. 96. That the said clerk of the crown shall, upon receiving a warrant, signed by the chairman of any committee of the House of Commons appointed for the trial of controverted elections, produce, by himself or his agent, before such committee, the said several books so deposited with him as aforesaid, and such production shall be sufficient *prima facie* proof of the authority of the said poll books.

Sect. 97. That every sheriff, under sheriff, clerk of the peace, town clerk, secondary, returning officer, clerk of the crown, postmaster, overseer, or other person, or public officer, required by this Act to do any matter or thing, shall for every wilful misfeasance, or wilful act of commission or omission contrary to this Act, forfeit to any party aggrieved the penal sum of £100, or such less sum as the jury before whom may be tried any action to be brought for the recovery of the before-mentioned sum shall consider just to be paid to such party, to be recovered by such party, with full costs of suit, by action for debt in any of her Majesty's superior Courts at Westminster: Provided always, that nothing herein contained shall be construed to supersede any remedy or action against any returning officer according to any law now in force.

By the 26 & 27 Vict. c. 29, s. 2, the candidates are to declare in writing to the returning officer, on or before the day of nomination, the names and addresses of their agents for the payment of election expenses, and it shall be the duty of the returning officer to publish, on or before the day of nomination, the name and address, or the names and addresses, of the agent or agents appointed in pursuance of this section.

In the event of the death or legal incapacity of any agent appointed in pursuance of this section, the candidate shall forthwith appoint another agent in his place, on giving notice to the returning officer of the name and address of the person so appointed, which shall be forthwith published by the returning officer.

6. *Proceedings previous to and at Elections for Cities, etc.*

Office copies of poll books to be received in evidence in Courts.

Clerk of the crown to preserve poll-books, and deliver office copies if required;

and to produce them before election committee, if required.

Parties wilfully contravening the Act liable to an action for debt.

Candidates' agents' names to be published.

VI. Proceedings previous to and at the Election of Members for Cities and Boroughs.

The returning officer takes the bribery oath, and reads the precept, as in county elections.

Duty of returning officer, etc.

By sect. 7 of the 3 Geo. 3, c. 15, it is enacted, that the returning officer shall read or cause to be read openly this Act at the time of election of members to serve in Parliament for cities, towns, ports, or boroughs, where the right of election is in the whole, or in part, in freemen as aforesaid.

Special Acts to be read where election in freemen, etc.

6. *Proceedings previous to and at Elections for Cities, etc.*

Oaths of allegiance, supremacy, and abjuration not to be taken.

Repeal of such part of 2 Will. 4, c. 45, as relates to poll being kept open two days.

Period of polling for boroughs limited to one day.

Polling for boroughs in England to be at several booths.

Amendment of law as to numbers in polling booths.

Not more than 100, if so required.

By sect. 8, London and Norwich are excepted.

The candidates are then nominated, and are usually proposed and seconded by registered electors.

The 5 & 6 Will. 4, c. 36, s. 6, respecting oaths (see *ante*, 1149), applies generally to all elections, whether for counties or boroughs.

And by the same statute (5 & 6 Will. 4, c. 36, s. 1), after reciting that it would tend to promote the purity of elections and the diminution of expense if the poll at all contested elections of members to serve in Parliament for cities, boroughs, and towns, or for counties of cities or counties of towns, were taken in one day: and that by the 2 Will. 4, c. 45, it is among other things enacted, that such poll may remain open during the space of two days: and that it is expedient to repeal the part of the said recited Act which allows the poll so to continue open during the space of two days; it is enacted that from and after the passing of this Act such part of the said recited Act as allows the poll to continue open during two days in cities, boroughs, and towns, or in counties of cities or counties of towns, be repealed, and the same is hereby repealed.

Sect. 2. *At every contested election of a member or members to serve in Parliament for any city, borough, or town, or county of a city or county of a town, the polling shall commence at eight of the clock in the forenoon of the day next following the day fixed for the election; and the polling shall continue during such one day only; and no poll shall be kept open later than four of the clock in the afternoon: Provided always, that when such day next following the day fixed for the election shall be Sunday, Good Friday, or Christmas Day, then in the case it be Sunday, the poll shall be on the Monday next following; and in the case it be Good Friday, then on the Saturday next following; and in the case it be Christmas Day, then on the next following day, if the same shall not be Sunday, and if it be Sunday, on the next following Monday.*

By the 2 Will. 4, c. 45, s. 68, at every contested election of a member or members to serve in any future Parliament for any city or borough in England, except the borough of Monmouth, the returning officer shall, if required thereto, by or on behalf of any candidate, on the day fixed for the election, and if not so required may, if it shall appear to him expedient, cause to be erected for taking the poll at such election different booths for different parishes, districts, or parts of such city or borough (a), which booths may be situated either in one place or in several places, and shall be so divided and allotted into compartments as to the returning officer shall seem most convenient, so that no greater number than six hundred shall be required to poll at any one compartment (b).

By the 31 & 32 Vict. c. 58, s. 24, the third section of the said Act of the session of the fifth and sixth years of king William the fourth, chapter thirty-six, shall be repealed, and instead thereof be it enacted, that the polling booths at each polling place shall be so divided and arranged in compartments by the sheriff or other returning officer that not more than five hundred electors shall be allotted to poll in each compartment.

The 5 & 6 Will. 4, c. 36, s. 4, enacts that *on the requisition of any candidate, or of any elector being the proposer or seconder of any candidate*, the booths or compartments of each polling place shall be so divided and arranged by the sheriff or other returning officer that not more than one hundred electors shall be allotted to poll in each such booth or

(a) See the 30 & 31 Vict. c. 102, s. 34, *post*, 1155.

(b) See next page for the remainder of this section.

compartment: Provided always, that such candidate or elector making such requisition shall pay all such expenses incident upon such division or arrangement.

And by sect. 5, in case any requisition as aforesaid shall be made on or before the day fixed for the election, the sheriff or other returning officer shall forthwith give public notice of the situation of such booths, which shall be deemed to be sufficient notice, any law or statute to the contrary notwithstanding.

The sect. 68 of the 2 Will. 4, c. 45, then goes on to enact that the returning officer shall appoint a clerk to take the poll at each compartment, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the several parishes, districts, and parts for which such booth is respectively allotted; and no person shall be admitted to vote at any such election, except at the booth allotted for the parish, district, or part wherein the property may be situate in respect of which he claims to vote, or in case he does not claim to vote in respect of property, then wherein his place of abode as described in the register may be; but in case no booth shall happen to be provided for any particular parish, district, or part as aforesaid, the votes of persons voting in respect of property situate in any parish, district, or part so omitted, or having their place of abode therein, may be taken at any of the said booths, and the votes of freemen residing out of the limits of the city or borough may be taken at any of the said booths: and public notice of the situation, division, and allotment of the different booths shall be given two days before the commencement of the poll by the returning officer; and in case the booths shall be situated in different places, the returning officer may appoint a deputy to preside at each place: and at every such election the poll clerks at the close of each day's poll shall enclose and seal their several poll books, and shall publicly deliver them, so enclosed and sealed, to the returning officer or his deputy, who shall give a receipt for the same, and shall, on the commencement of the poll on the *second* day (a) deliver them back, so enclosed and sealed, to the persons from whom he shall have received the same; and every deputy so receiving any such poll books, on the final close of the poll, shall forthwith deliver or transmit the same, so enclosed and sealed, to the returning officer, who shall receive and keep all the poll books unopened until the following day, unless such day be Sunday, and then until the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and make proclamation of the member or members chosen, not later than two o'clock in the afternoon of the said day: Provided always, that the returning officer, or his lawful deputy, may, if he think fit, declare the final state of the poll, and proceed to make the return immediately after the poll shall have been lawfully closed: Provided also, that no nomination shall be made or election holden of any member for any city or borough in any church, chapel, or other place of public worship (b).

By the 30 & 31 Vict. c. 102, s. 34, the local authority of every borough shall, if they think convenience requires it, as soon as may be after the passing of this Act, divide such borough into polling districts, and the returning officer shall, in the case of a contested election, provide at least one booth or room for taking the poll in each polling district, and in cases where a parliamentary borough is constituted of two or more

6. *Proceedings previous to and at Elections for Cities, etc.*

On such requisition, notice to be given of the situation of booths.

Each person to vote at the booth for his district.

If booths in different places, a deputy to preside at each.

Custody of poll books, and final declaration of poll.

(a) Some portions of this clause are of course not now applicable to borough elections, since only *one* day's polling is allowed.

(b) And see now the 6 Vict. c. 18, s. 93, *ante*, 1152, as to safe custody of poll books subsequent to the declaration.

6. *Proceedings previous to and at Elections for Cities, etc.*

towns, the distance between two of which shall exceed two miles, there shall be provided a booth or room for taking the poll in each of such towns.

Where any parish in a borough is divided into, or forms part of, more than one polling district, the overseers shall, so far as practicable, make out the list of voters in such manner as to divide the names in conformity with each polling district.

The town clerk, as defined by the Act of the 6 Vict. c. 18, shall cause the lists of voters for each borough to be copied, printed, arranged, and signed, and delivered in the manner directed by the said Act so as to correspond with the division of the borough into polling districts.

A description of the polling districts made or altered in pursuance of this Act shall be advertised by the local authority in such manner as they think fit, and notice of the situation, division, and allotment of the polling booth or place for each district shall be given in manner now required by law.

The local authority shall mean in every municipal borough, and in every borough any part of which forms a municipal borough, the town council of such borough, and in other boroughs the justices of the peace acting for such borough, or if there be no such justices, then the justices acting for the division of the county in which such borough or the greater part thereof is situate, and in cases where a parliamentary borough is constituted by the combination of two or more municipal boroughs, then the local authority shall mean the town council of that municipal borough in which the nomination takes place.

The local authority may from time to time alter any districts made by them under this Act.

Amendment of
sect. 34 of 30 &
31 Vict. c. 102.

By the 31 & 32 Vict. c. 58, s. 18, where a municipal borough forms part of a parliamentary borough the town clerk of such municipal borough shall be deemed to be the town clerk within the meaning of the thirty-fourth section of the "Representation of the People Act, 1867," and the Acts relating to registration,

The local authority within the meaning of the same section, in boroughs where the town council is not the local authority, shall be the justices of the peace of the petty sessional division in which such borough is situate, or if such borough be situate in or comprise more than one petty sessional division, then the justices in general or quarter sessions having jurisdiction over such borough or the greater part thereof in area.

The two questions to be tendered to voters.

The questions as to the identity of the voter and whether he has voted previously at such election, will be found *ante*, 1147, and may be demanded of each elector at every election for boroughs, cities, towns, counties of cities, or counties of towns.

The oath.

The oath to be administered, in case of requisition by a candidate, or his proposer or seconder, will be found in the same page.

Polling districts for Shoreham, Cricklade, Aylesbury, and East Retford.

By the 2 Will. 4, c. 45, s. 69, so far as relates to the several boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford, as defined by this Act, the said several boroughs shall be divided into convenient districts for polling, and there shall be appointed in each district a convenient place for taking the poll at all elections of members to serve in any future Parliament for each of the said boroughs, which districts and places for taking the poll shall be settled and appointed by an Act to be passed in this present Parliament (a).

(a) The 2 & 3 Will. 4, c. 64, s. 33; and see the 25 & 26 Vict. c. 95, by which the 6 & 7 Will. 4, c. 102, and the 16 & 17 Vict. c. 68, *ante*, 1141, 1142, are to apply to these boroughs.

As to the adjournment of the nomination or poll in case of riot, the expense of booths and poll clerks, hiring houses for polling in, providing certified copies of the register for each booth, and the powers of deputy returning officers, see *ante*, 1141-1145.

By the 17 & 18 Vict. c. 57, every writ for making any election of a member to serve in Parliament for any borough, city, or town shall be directed to the returning officer of the said borough or his deputy, and in their absence to the sheriff of the county in which the said city, borough, or town is situate, and in all cases whatever whenever there shall be, either from temporary vacancy or from some other cause, no person duly qualified in any borough, city, or town to perform the duties of a returning officer for the same, the sheriff of the county in which such borough, city, or town is situate shall be charged with the execution of the said writ, and shall execute the same, and in all respects perform the duties of and incidental to the office of returning officer; provided always, that it shall not be lawful for the said sheriff to receive or execute the writ except when there shall be no person within the said borough, city, or town legally qualified and competent as returning officer to execute the same.

7. *Other general Matters previous to an Election.*

VII. Other general Matters previous to an Election.

The Parliament is regularly to be summoned by the Queen's warrant or order issued out of Chancery by advice of the privy council at least thirty-five days before it begins to sit (*a*).

Parliament how summoned.

The Lord Chancellor of Great Britain is by such warrant commanded to issue writs for the calling of such new Parliament.

The "Reform Act" (2 Will. 4, c. 45) only affects the old form of this writ, as to requiring that it (amongst other writs) "shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this Act into effect. (Sect. 77.)

Form of writ.

By the 16 & 17 Vict. c. 68, s. 1, the writ for any election hereafter to be directed to the sheriff of any county in England or Wales (other than the county of a city or of a town) shall require such sheriff to cause election to be made of a knight or knights to serve in Parliament for such county, and for any riding, parts, or division thereof only, and no further or otherwise; the writ for making any election of a member or members to serve in Parliament for the universities of Oxford and Cambridge, and for every borough, town corporate, port, or place returning members to serve in Parliament in England and Wales shall hereafter be directed to the vice-chancellors of the said universities, and to the returning officers of such boroughs, towns corporate, ports, and places respectively and such vice-chancellors and returning officer shall thereupon in due course of law proceed to election, and after such election certify the same, together with the writ, according to the directions thereof, all such writs hereafter to be issued, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs shall be and the same are hereby authorized to be framed and expressed in such manner and form as may be necessary for carrying the provisions of this Act into effect.

By the 30 & 31 Vict. c. 102, s. 58, all writs to be issued for the election of members to serve in Parliament, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs or relating

Writs, etc., to be made conformable to this Act.

7. Other general Matters previous to an Election.

Course in which election writs forwarded by messenger of the great seal, and through the post-office.

to the registration of voters, shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this Act into effect.

The 53 Geo. 3, c. 89, for the more regular Conveyance of Writs for the Election of Members to serve in Parliament, enacts, s. 1, that the messenger, or pursuivant of the great seal, shall, after the receipt of such writs, forthwith carry such of them as shall be directed to the sheriffs of London or Middlesex to the respective officers of such sheriffs, and all such other writs to the general post-office in London, and there deliver them to the postmaster-general or his deputy, who shall give an acknowledgment in writing, expressing therein the time of delivery, and shall keep a duplicate of such acknowledgment, signed by the parties respectively to whom and by whom the same shall be so delivered; and that the postmaster or his deputy shall dispatch all such writs free of postage, by the first post or mail after the receipt thereof, under covers directed to the proper officers to whom the said writs shall be respectively directed, accompanied with proper directions to the postmaster or deputy postmaster of the place, or nearest to the place, where such officers shall hold their office, requiring such postmaster or deputy forthwith to carry such writs respectively to such office, and to deliver them there to the officers to whom they shall be respectively directed, or their deputies, who are required to give to such postmaster or deputy a memorandum in writing acknowledging the receipt of every such writ, and setting forth the day and the hour the same was delivered by such postmaster or deputy, which memorandum shall also be signed by such postmaster or deputy, who are required to transmit the same by the first or second post afterwards to the postmaster-general or his deputy, at the general post-office in London, who are required to make an entry thereof in a proper book for that purpose, and to file the memorandum along with the duplicate of the said acknowledgment, signed by the messenger, to the intent that the same may be inspected or produced upon all proper occasions by any person interested in such elections.

Persons to whom such writs are usually directed must give an account of the places of their offices.

Mileage and other fees abolished, except £2. 2s. on a vacancy, and £50 on a new Parliament.

The statute, after directing (ss. 2 and 3) that all persons to whom the writs for the election of members to Parliament ought to be and are usually directed shall, within a month, send to the postmasters-general an account of the places where they shall hold their offices, and so from time to time, as often as such places shall be changed, and of the post town nearest to such offices; or in case any such office shall be in London, Westminster, or Southwark, or within five miles thereof, shall send such account to the messenger of the great seal, proceeds to enact (ss. 4 and 5) that after the death of the then messenger of the great seal, the allowances of *mileage* shall cease, except an allowance of £2. 2s. on each writ for the election of a member on any vacancy, and of £50 on the calling of a new Parliament. And it further enacts, that whereas the messenger of the great seal and his deputy have, from time to time, received certain other fees for the conveyance and upon the delivery of these writs, such fees shall cease from the passing of the Act, and that neither the messenger nor his deputy, nor any other person, shall receive or take any fee, reward, or gratuity whatsoever for the conveyance or delivery of any such writ.

Persons acting in violation of the Act guilty of a misdemeanour.

Sect. 6 enacts, that every person concerned in the transmitting or delivery of any such writ as aforesaid, who shall wilfully neglect or delay to deliver or transmit any such writ, or accept any fee, or do any other matter or thing in violation of this Act shall be guilty of a misdemeanour, and may, upon conviction upon any indictment or information in his Majesty's Court of King's Bench, be fined and imprisoned, at the discretion of the Court, for such misdemeanour.

Sect. 7. Offences committed in Scotland may be punished by a fine or

imprisonment, as the judge before whom the offender shall be tried and convicted may direct.

If a member die, or resign his seat, or be called to the upper house *during the session*, the speaker, on receiving the order of the house, issues his writ for a new election.

But if *during the recess* any member dies or becomes a peer, the speaker is empowered to issue such writ by the 24 Geo. 3, c. 26, on a certificate of the fact signed by any two members.

The 21 & 22 Vict. c. 110, makes a similar provision in case of the acceptance by a member of a disqualifying office.

So if a member be disqualified by bankruptcy, and that fact be duly certified by the commissioner under the fiat, the speaker is authorized to issue his warrant for a new election. (52 Geo. 3, c. 144.)

Notice of these facts are given in the *London Gazette* six days previous to the issuing of the writ. (24 Geo. 3, c. 26, s. 3; 52 Geo. 3, c. 144, s. 2; 26 & 27 Vict. c. 20.)

And by the 25 Geo. 3, c. 84, s. 4, upon an election of a knight of the shire, the sheriff shall, within two days after the receipt of the writ, cause proclamation to be made at the place where the ensuing election ought by law to be holden of a special county court to be there holden for the purpose of such election only, on any day, Sunday [Good Friday and Christmas Day, 25 & 26 Vict. c. 92, s. 5] excepted, not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day; and shall proceed in such election at such special county court in the same manner as if the said election were to be held at a county court, or an adjournment thereof, according to the laws now in being.

Provided, that the usual county court for all other purposes, or any adjournment thereof, may be held and proceeded in by the sheriff, in the same manner, and at the same times and places, as if the writ for the election of a knight of the shire had not been received.

By the 16 & 17 Vict. c. 68, s. 2, whereas by the fourth section of the Act of the 25 Geo. 3, c. 84, it is provided that immediately after the receipt of the writ for making any election of a knight or knights to serve in Parliament for any county or shire in England or Wales, and endorsing on the back thereof the day of receiving the same as by law required, it should and might be lawful for the sheriff of such county, and he is thereby required, within two days after the receipt thereof, to cause proclamation to be made at the place where the ensuing election ought by law to be holden of a special county court to be there holden for the purpose of such election only on any day (Sunday excepted) not later from the day of making such proclamation than the sixteenth day nor sooner than the tenth day: And whereas it is expedient to limit the time for proceeding to such elections: be it therefore enacted that hereafter any such special county court for the purpose of the election of a knight or knights to serve in Parliament for any county, riding, parts, or division of any county in England or Wales shall be holden on any day (Sunday, Good Friday, and Christmas Day excepted) not later from the day of making such proclamation than the twelfth day nor sooner than the sixth day, provided that this section shall not apply to the election for any county of a city or of a town.

By the 31 & 32 Vict. c. 58, s. 15, the above section is to be construed as if the words "fourth day" were substituted for "sixth day."

By the 16 & 17 Vict. c. 68, s. 3, in every city or town being a county of itself, and in every borough, town corporate, port, or place returning or contributing to return a member or members to serve in Parliament in England and Wales, the officer to whom the duty of giving notice for the election of such member or members belongs shall proceed to elec-

7. *Other general Matters previous to an Election.*

Vacancy by death, resignation, etc.,

—or bankruptcy.

Time of proclamation for county election.

In boroughs.

7. *Other general Matters previous to an Election.*

Form of notice.

Returning officer to give notice of election.

tion within six days after the receipt of the writ or precept, giving three clear days' notice at least of the day of election, exclusive of the day of proclamation and the day of election.

By the 17 & 18 Vict. c. 102, s. 11, for the more effectual observance of this Act, every returning officer to whom the execution of any writ or precept for electing any member or members to serve in Parliament may appertain or belong shall, in lieu of the proclamation or notice of election heretofore used, publish or cause to be published such proclamation or notice of election as is mentioned in schedule B. to this Act, or to the like effect (*a*).

Notice of time and place of election to be given within certain hours.

By the 33 Geo. 3, c. 64, all notices of the time and place of any election shall be publicly given at the usual place or places, within the hours of eight in the forenoon and four in the afternoon from 25th October to 25th March, and of eight in the forenoon and six in the afternoon from 25th March to 25th October inclusive; and no notice shall be deemed or taken to be a good or valid notice for any purpose, or to any effect whatsoever, which shall not be made and published in the manner and within the time of the day aforesaid.

Inspectors.

And by the 7 & 8 Will. 3, c. 25, s. 3, the sheriffs shall admit one person for each candidate to be inspector of the clerks.

Check book.

Sect. 9 of the 18 Geo. 2, c. 18, enacts, that the sheriff shall allow a check book for every poll book, for each candidate, to be kept by their inspectors, at every place where the poll shall be taken.

In counties of towns.

By the 19 Geo. 2, c. 28, s. 6, the sheriff or sheriffs of any city or town, being a county of itself in that part of Great Britain called England, or in his or their absence, his or their under sheriff or under sheriffs, or such other person as he or they shall depute, shall, at every election of any member or members to serve in Parliament for such city or town allow a check book for every poll book for each candidate, to be kept by their respective inspectors at the place where the poll for such election shall be taken or carried on.

Notice, how to be at given at New Shoreham.

Within New Shoreham, Bramber, and Steyning, "the constable or other proper officer to whom any writ or precept shall be directed for making any election for the said borough, shall, upon the reception of such writ or precept, indorse upon the back thereof the day of his receipt thereof, in the presence of the party from whom he received such precept; and shall forthwith cause public notice to be given within the said borough of New Shoreham, and at the towns of Bramber and Steyning, in the said county of Sussex, by fixing up a notice thereof in writing on the market houses, or on the doors of the churches of the said towns on the day of election; and shall proceed to election thereupon, within the space of twelve days, and not less than eight days next after his receipt of the same precept." (11 Geo. 3, c. 55, s. 5.)

Cricklade, etc.

Within Cricklade, Highworth, Malmsbury, Swinton, and Wooton Bassett. (22 Geo. 3, c. 31, s. 5.)

Aylesbury, etc.

Within Aylesbury, Great Missenden, Wendover, and Haddenham. (44 Geo. 3, c. 60, s. 4.)

East Retford, etc.

And within East Retford, Worksop, Tuxford, Ollerton, public notice is to be given in a similar manner to that prescribed for New Shoreham. (11 Geo. 4 & 1 Will. 4, c. 74, s. 4.)

Place of election for boroughs.

The 71st sect. of the Reform Act would seem to leave the place of election in boroughs under the discretion of the sheriff or returning officer, subject only to the restrictions mentioned in that clause.

(a) See the form, *post*, 1179.

VIII. Bribery, Treating, and Intimidation (a).

8. *Bribery,
Treating,
and Intimi-
dation.*

Though bribery at parliamentary elections must always have been a crime at common law, and punishable by indictment or information, yet there are no traces of any prosecution for the offence till after the Legislature inflicted particular penalties upon it by 2 Geo. 2, c. 34. In Lord *Coke*, *Hawkins*, and others, the definitions of bribery extend only to the corruption of men in judicial offices.

Lord *Glenbervie's* definition of bribery at common law, is as follows :— "Wherever a person is bound by law to act without any view to his private emolument, and another, by a corrupt contract, engages such person, on condition of the payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are by such contract guilty of bribery." (2 *Doug.* 400.) So Lord *Mansfield* in *R. v. Vaughan* (4 *Burr.* 2501), says, "Wherever it is a crime to take, it is a crime to give,—they are reciprocal; and in many cases, especially in bribery at elections to Parliament, the attempt is a crime, it is complete on his side who offers it. And it is clear that the offer of a bribe was always a misdemeanour, on the principle that every attempt to commit a misdemeanour is itself a misdemeanour. (See *R. v. Scofield*, *Cold.* 397; *R. v. Johnson*, 2 *Show*; *Wade v. Broughton*, *Q. V. & B.* 173.) And the asking for a bribe would seem for the same reasons to be a misdemeanour also.

The 17 & 18 Vict. c. 102 ("The Corrupt Practices Prevention Act, 1854"), consolidates and amends the laws for preventing corrupt practices in the election of members to serve in Parliament.

Sect. 1 repeals the previous enactments on the same subject.

Sect. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration (b), to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election: Bribery defined.
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election:
3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election:
4. Every person who shall, upon or in consequence of any such gift,

(a) See *Rogers on Elections and Registration*.

(b) "I am of opinion," said Mr. Baron *Alderson*, "and I know several of my learned brothers agree with me,

that the words 'valuable consideration' mean 'valuable consideration estimated in money.'" (*Cooper v. Slade*, 6 *E. & B.* 447.)

8. *Bribery,
Treating,
and Intimi-
dation.*

loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election;

5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election:

And any person so offending shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of £100 to any person who shall sue for the same, together with full costs of suit: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

This proviso does not extend to all payments which before the Act were not bribery, for it would thus repeal all that is new in the preceding part of the section. It must apply either to payments expressly or impliedly legalized by the Act, *e. g.* made by the agent "for election expenses," etc., or to payments undoubtedly legal at the time of the passing of the Act, "such as printing, messengers, hire of committee rooms, tavern expenses, and expenses of that nature, and was intended to exempt cases where a candidate had paid such sums, or agreed to pay them before the election, to keep the voter in good humour, or, in other words to induce him to vote." (*Per Watson, B., Cooper v. Slade*, 27 L. J., Q. B. 453.)

In the case of *Cooper v. Slade* (6 E. & B. 447), the question discussed was, whether the unconditional payment by a candidate of travelling expenses either before or after the election, for which an action for penalties under the above section had been brought by the plaintiff was lawful; and the Court decided that it was.

Now, however, by the 21 & 22 Vict. c. 87, s. 1, it shall be lawful for any candidate, or his agent by him appointed in writing according to the provisions of the first-mentioned Act, to provide conveyance for any voter for the purpose of polling at an election; and not otherwise; but it shall not be lawful to pay any money or give any valuable consideration to a voter for or in respect of his travelling expenses for such purpose (a).

Payment of ex-
penses of
conveying voters
in boroughs to
the poll illegal,
except herein
named.

By the 30 & 31 Vict. c. 102, s. 36, it shall not be lawful for any candidate, or any one on his behalf, at any election for any borough, except the several boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person; and if any such candidate, or any person on his behalf, shall pay any money on account of the conveyance of any voter to the poll, such payment shall be deemed to be an illegal payment within the meaning of the "Corrupt Practices Prevention Act, 1854."

Bribery further
defined.

Sect. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election:
2. Every person who shall, after any election, directly or indirectly,

(a) The rest of the section is repealed by the 26 Vict. c. 29.

by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election:

8. *Bribery, Treating, and Intimidation.*

And any person so offending shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of £10 to any person who shall sue for the same, together with full costs of suit.

Penalty.

By the 30 & 31 Vict. c. 102, s. 49, any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made shall also be guilty of bribery, and punishable accordingly.

Corrupt payment of rates to be punishable as bribery.

By the 17 & 18 Vict. c. 102, s. 4, every candidate (*a*) at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time, either before, during, or after any election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of £50 to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.

Treating defined.

Penalty.

By the 30 & 31 Vict. c. 102, s. 23, whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of 40s. for each offence, to any person who shall sue for the same, together with full costs of suit.

Refreshments to voters on the days of nomination or polling declared illegal.

The 4th section, said Mr. Baron *Alderson*, in delivering the judgment of the Court of Exchequer Chamber in *Cooper v. Slade* (6 *E.*

(*a*) By the 21 & 22 Vict. c. 87, s. 3, so much of section 38 of the 17 & 18 Vict. c. 102, as defines the words "candidate at an election" shall be repealed; and in the construction of the said Act as amended by this Act the words "candidate at an election," and the words "candidate at any election," shall include all persons elected to serve in Parliament at such election, and all persons nominated

as candidates at such election, or who shall have declared themselves candidates on or after the day of the issuing of the writ for such election, or after the dissolution or vacancy in consequence of which such writ shall have been issued: provided that nothing herein contained shall be construed to impose any liability on any person nominated without his consent.

8. *Bribery, Treating, and Intimidation.*

& B. 447) which was a case of travelling expenses, "only prohibits the corruptly giving of meat, etc., for the purpose of corruptly influencing a voter to give a vote, it does not prohibit the *bonâ fide* giving of such meat unconditionally; while sect. 23 absolutely prohibits any giving of any refreshment to any voter on the day of nomination or day of polling on account of his having polled or being about to poll, without using any such words 'in order to induce.' Now a giving of refreshment might clearly be within sect. 23 and not within sect. 4, because not given in order to induce the voter to vote."

Undue influence defined.

Sect. 5. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of £50 to any person who shall sue for the same, together with full costs of suit.

Penalty.

By sect. 6, the names of offenders are to be struck out of the register, and inserted in a separate list.

Penalties, how to be recovered.

Sect. 9. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of her Majesty's superior Courts at Westminster, if the offence be committed in England or Wales, and in any of her Majesty's superior Courts in Dublin if the offence be committed in Ireland, and in or before the Court of session if the offence be committed in Scotland, and not otherwise.

Costs and expenses of prosecutions.

Sect. 10. It shall be lawful for any criminal Court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that no indictment for bribery or undue influence shall be triable before any Court of quarter sessions.

In cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor.

Sect. 12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the Court in which such judgment shall be given.

Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs.

Sect. 13. It shall not be lawful for any Court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of £200 (to be acknowledged in like manner as is now required in cases of writs of *certiorari* awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitation of actions.

Sect. 14. No person shall be liable to any penalty or forfeiture hereby

enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the Court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

By the 26 & 27 Vict. c. 29, s. 5, the provisions of the fourteenth section of the "Corrupt Practices Prevention Act, 1854," shall extend to a misdemeanour or to any other offence under the Corrupt Practices Prevention Acts not punishable by a penalty or forfeiture, as well as to proceedings for any offence punishable by a penalty or forfeiture.

8. *Bribery, Treating, and Intimidation.*

Sect. 14 of 17 & 18 Vict. c. 102, extended to misdemeanours, etc.

Sect. 6. In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connection with which the offence is intended to be alleged to have been committed guilty of bribery, treating, or undue influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat.

General allegations sufficient in indictments.

Sect. 7. No person who is called as a witness before any election committee, or any commissioners appointed in pursuance of the Act of the session holden in the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by such committee or commissioners, on the ground that the answer thereto may criminate or tend to criminate himself: Provided always, that where any witness shall answer every question relating to the matters aforesaid which he shall be required by such committee or commissioners (as the case may be) to answer, and the answer to which may criminate, or tend to criminate him, he shall be entitled to receive from the committee, under the hand of their clerk, or from the commissioners, under their hands (as the case may be), a certificate stating that such witness was, upon his examination, required by the said committee or commissioners to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or such question; and if any information, indictment, or action be at any time thereafter pending in any Court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might have been prosecuted or proceeded against under such Acts, committed by him previously to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the Court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action, and may, at its discretion, award to such witness such costs as he may have been put to in such information, indictment, or action: Provided that no statement made by any person in answer to any question put by or before such election committee or commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal.

Evidence of witness on election committee and before commissions.

Expenses of Elections.

By the 26 & 27 Vict. c. 29, s. 2, no payment (except in respect of the

No payment,

8. *Bribery, Treating, and Intimidation.*

etc., shall be made by or on behalf of candidates otherwise than through authorized agents.

personal expenses of a candidate (*a*)), and no advance, loan, or deposit, shall be made by or on behalf of any candidate (*a*) at an election, before or during or after such election, on account of or in respect of such election, otherwise than through an agent or agents whose name and address or names and addresses have been declared in writing to the returning officer on or before the day of nomination, or through an agent or agents to be appointed in his or their place as herein provided; and any person making any such payment, advance, loan, or deposit, otherwise than through such agent or agents, shall be guilty of a misdemeanour (*b*), or in Scotland of an offence punishable by fine and imprisonment. It shall be the duty of the returning officer to publish, on or before the day of nomination, the name and address or the names and addresses of the agent or agents appointed in pursuance of this section.

In the event of the death or legal incapacity of any agent appointed in pursuance of this section, the candidate shall forthwith appoint another agent in his place on giving notice to the returning officer of the name and address of the person so appointed, which shall be forthwith published by the returning officer.

Bills, etc., to be sent in within month to agent, or right to recover barred.

Sect. 3. All persons who have any bills, charges, or claims upon any candidate (*a*) for or in respect of any election shall send in such bills, charges, or claims within one month (*c*) from the day of the declaration of the election to such agent or agents as aforesaid, otherwise such persons shall be barred of their right to recover such claims and every or any part thereof: provided always, that in case of the death within the said month of any person claiming the amount of such bill, charge, or claim, the legal representative of such person shall send in such bill, charge, or claim within one month after obtaining probate or letters of administration, or confirmation as executor, as the case may be, or the right to recover such claim shall be barred as aforesaid: Provided also, that such bills, charges, and claims shall and may be sent in and delivered to the candidate (*a*), if, and so long as, during the said month, there shall, owing to death or legal incapacity, be no such agent.

As to publication of statement of election expenses.

Sect. 4. A detailed statement of all election expenses incurred by or on behalf of any candidate (*a*) including such excepted payments as aforesaid, shall, within two months (*c*) after the election (or in cases where by reason of the death of the creditor no bill has been sent in within such period of two months, then within one month after such bill has been sent in), be made out and signed by the agent or, if there be more than one, by every agent who has paid the same (including the candidate in case of payments made by him), and delivered, with the bills and vouchers relative thereto, to the returning officer, and the returning officer for the time being shall, at the expense of the candidate, within fourteen days, insert or cause to be inserted an abstract of such statement, with the signature of the agent thereto, in some newspaper published or circulating in the county or place where the election was held; and any agent or candidate who makes default in delivering to the returning officer the statement required by this section shall incur a penalty not exceeding £5 for every day during which he so makes default (*d*); and any agent or candidate who wilfully furnishes to the said returning officer an untrue statement shall be guilty of a misdemeanour (*d*), or in Scotland of an offence punishable by fine and imprisonment; and

(*a*) See, as to the meaning of the word "candidate," the 21 & 22 Vict. c. 87, s. 3, *ante*, 1163, *n.* (*a*).

(*b*) By sect. 5, *ante*, 1165, the prosecution must be commenced within a year.

(*c*) *i.e.* calendar months. See the 13 & 14 Vict. c. 21, s. 4.

(*d*) The prosecution must be commenced within a year. See sect. 5, *ante*, 1165.

the said returning officer shall preserve all such bills and vouchers, and during six months after they have been delivered to him permit any voter to inspect the same, on payment of a fee of 1s.

By the 17 & 18 Vict. c. 102, s. 7, no candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of £2 to such person as shall sue for the same, together with full costs of suits; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music or flags or banners, shall be deemed illegal payments within this Act.

8. *Bribery, Treating, and Intimidation.*

No cockades, etc., to be given at elections.

Penalty.

By the 17 & 18 Vict. c. 102, s. 35, on the trial of any action for recovery of any pecuniary penalty under this Act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the Act of the 14 & 15 Vict. c. 99, and the "Evidence Amendment Act, 1853," but subject to and with the exceptions contained in such several Acts: Provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

In actions for penalties parties, etc., to be competent witnesses.

Sect. 38. Throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewardry, or combined counties respectively returning a member or members to serve in Parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman presiding in any Court held for the revision of the list of voters, or his deputy in Ireland, and a sheriff or sheriff's Court of appeal in Scotland, and every other person whose duty it may be to hold a Court for the revision and correction of the lists or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament; and the words "candidate at an election" shall include all persons elected as members to serve in Parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

Interpretation of terms.

By the 26 Vict. c. 29, s. 11, the Corrupt Practices Prevention Acts, which by sect. 1 are to include that Act, the 21 & 22 Vict. c. 87, and the 17 & 18 Vict. c. 102, are to continue in force for a period of five years

Continuance of Corrupt Practices Prevention Acts.

9. *Schedules and Forms.* from the 8th of June, 1863, and from thenceforth until the end of the then next session of Parliament.

IX. Schedules and Forms.

SCHEDULES TO WHICH THE 6 VICT. c. 18, REFERS.

SCHEDULE (A).

Forms for Counties.

No. 1.

Precept of the Clerk of the Peace to the Overseers.

[The following form is substituted by the 28 Vict. c. 36, for Form No. 1 in Schedule (A.) to the 6 Vict. c. 18.]

County of — } To the overseers of the poor of the parish of
to wit. } [or of the township of].

In pursuance of the provisions of the Acts of Parliament in that behalf, I require your attention to the following

INSTRUCTIONS.

On or before the 20th day of June you are to publish one of the copies of the register for your parish [or township] herewith sent, together with a notice, signed by you, according to the form marked No. 2, among the printed forms herewith sent.

The manner in which you are required to publish that register and notice is as follows (that is to say), you are to fix one of the printed copies (each copy being first signed by you) on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish or township, including chapels which do not belong to the Established Church, or if there should be no such church or chapel, then in some public or conspicuous situation in your parish [or township], and it must remain there during a period including two Sundays at least, and not later than the 20th day of July.

On or before the last day of July you are to make out an alphabetical list of all persons who, on or before the 20th day of July, shall have delivered or sent to you their claims as voters for the county [riding, etc.] in which your parish [or township] lies, in respect of any property situate wholly or in part within your parish [or township]; and in making out such list you are to write or cause to be written, in the proper column of the printed form of list (herewith sent) numbered 3, the Christian name and surname of every such person, with the place of his abode, the nature of his qualification, and the local or other description of the property, and the name of the occupier, accordingly as the same shall be stated in the claim. If you have reasonable cause to believe that any person so claiming, or any person whose name shall appear in the copy of the register for your parish [or township] herewith sent, is not entitled to have his name on the new register about to be made, you are to add the word "objected" before his name in the margin of the copy of the register or list in which his name appears; and you are also to add the word "dead" before the name of any person whom you shall have reasonable cause to believe to be dead. Having done this, you are to sign the list of claimants, and also one of the copies of the register herewith sent, and to cause a sufficient number of copies of such lists to be written or printed, and then, on or before the 1st day of August, you are to publish the said register and lists, with your marginal additions, on

every church and chapel in your parish [or township] in the same manner as before mentioned with regard to the notice.

9. Schedules and Forms.

You are to keep a copy of the list of claimants and of the said register sent to you, with your marginal additions thereon, signed by you, and to allow them to be perused by every person desirous of perusing them, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after you have published them, without payment or demand of any fee; and you are also to deliver copies of the list of claimants and of the said register, signed by you, to every person applying for the same, on payment of a price for such copy after the rate contained in the table marked schedule (D.) No. 1, herewith sent.

You are to make out a list, according to the form numbered 6 (herewith sent), containing the name of every person against whom a notice of objection shall have been given to you or any one of you, on or before the 20th day of August; and you are to publish copies of such lists on or before the first day of September on every church and chapel in your parish or township, in the same manner as before mentioned with regard to the notice; and you are to keep a copy of such list of persons objected, to be perused by any person, without payment or fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September, both inclusive, and you are to deliver a copy of such list to any person requiring the same, on payment of a price for such copy after the rate contained in the table marked schedule (D.) No. 1. herewith sent.

And if you shall find any such notice, list, register, or other document published by you as aforesaid to be destroyed, mutilated, defaced, or removed, you are forthwith to place another to the same effect in its place.

On or before the 1st day of September you are to deliver to the clerk of the peace of the county [riding, etc.] wherein your parish [or township] is situate, the list of claimants, the copy of the part of the register (herewith sent), and also a copy of the list of persons objected to, signed by you.

You are to attend the Court to be holden by the barrister appointed to revise the lists relating to your parish [or township], of the time and place of holding which notice will be sent to you; and you are there to deliver to the barrister holding such Court the original notices of claim and original notices of objection given to you as aforesaid.

Herein if you fail you will be liable to the penalties in that case provided.

Given under my hand, this *day of*

*Clerk of the peace for the county
of* .

No. 2.

Notice to be given by the Overseers.

We hereby give notice, that all persons entitled to vote in the election of a knight or knights of the shire for the county [or for the riding, etc.] of _____ in respect of any property situate wholly or in part within this parish [or township] who are not upon the register of voters now in force, or who, being upon the register, shall not retain the same qualification or continue in the same place of abode as described in such register, and who are desirous to have their names inserted in the register of voters about to be made for the said

9. Schedules
and Forms.

county [or riding, etc.], are hereby required to give or send to us or any of us, on or before the twentieth day of July in this year a notice in writing by them signed, in which their name and surname at full length, their place of abode, and the particulars of their qualification must be legibly written according to the form hereunder set forth. Any person who is upon the present register may also make his claim if he thinks fit; but it is not necessary that he should do so if he has the same qualification and place of abode now described in the register.

Dated this

day of June in the year

(Signed)

A. B. }
C. D. } Overseers of the parish
E. F. } [or township] of .

Form of Notice of Claim to be given to Overseers.

To the overseers of the parish of [or township of] .

I hereby give you notice that I claim to be inserted in the list of voters for the county of [or for the riding, parts, or division of the county of], as the case may be, and that the particulars of my place of abode and qualification are stated in the columns below.

Dated this

day of

in the year

(Signed) G. H.

Christian name and surname of the claimant at full length.	Place of abode.	Nature of qualification.	Street, lane, or other like place in this parish [or township], and number of house (if any) where the property is situate, or name of the property, if known by any, or name of the occupying tenant; or if the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent is issuing, or some of them, and the situation of the property.

No. 3.

County of [or riding, parts, or division of the county of] to wit [or] , as the case may be. } The list of persons claiming to be entitled to vote in the election of a knight [or knights] of the shire for the county of [or for the riding, parts, or division of the county of] , as the case may be, in respect of property situate in whole or in part within the parish of [or township, as the case may be].

Margin for entering overseers' objections.	Christian name and surname of each voter at full length.	Place of abode.	Nature of qualification.	Street, lane, or other like place in this parish [or township], and number of house (if any) where the property is situate, or name of the property, and the name of the tenant; or if the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent is issuing, or some of them, and the situation of the property.

(Signed)

A. B. } Overseers of the said
C. D. } parish [or township].
E. F. }

No. 4.

Notice of Objection to be given to the Overseers.

To the overseers of the parish [or township, as the case may be of

I hereby give you notice that I object to the name of the person mentioned and described below being retained in the list of voters for the county [or for the riding, parts, or division of the county] of

Christian and surname of the voter objected to as described in the list or register.	Place of abode as described.	Nature of qualification as described.	Street, lane, or other like place where the qualifying property is situate, etc., as described in the list or register.

Dated the

day of

in the year

(Signed)

A. B.

[Place of abode.]

No. 5 (a).

Notice of Objection to be given to parties objected to by any person other than Overseers, and to the occupying Tenant of the qualifying Property.

To Mr. of [here insert the name and place of abode of the person objected to as described in the list; and in the case of notice to the tenant of the qualifying property insert his name and place of abode as described in the list].

Take notice, that I object to your name [in the notice to the tenant, instead

(a) See also the form of notice of objection given by the 28 Vict. c. 36, *post*, 1179.

9. *Schedules and Forms.* of the words "*your name*," insert the name of the person objected to] *being retained in the* [here insert the name of the parish] *list of voters for the county of* [or for the riding, etc.].

Dated this day of one thousand eight hundred and

(Signed) A. B. of [place of abode]
on the register of voters for the parish of

No. 6.

List of Persons objected to, to be published by the Overseers.

The following persons have been objected to as not being entitled to have their names retained in the lists of voters for the county of [or for the riding, parts, or division of the county of] .

Christian name and surname of each person objected to.	Place of abode.	Nature of the supposed qualification.	Street, lane, or other like place in this parish [or township], and number of house (if any), where the property is situate, or name of the property, and the name of the tenant; or if the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent is issuing, or some of them, and the situation of the property.

(Signed) A. B. } Overseers of the parish of
C. D. } [or town-
E. F. } ship, as the case may be].

SCHEDULE (B).

Forms for Cities and Boroughs.

No. 1.

Precept of the Town Clerk to the Overseers.

City [or borough] of } To the overseers of the poor of the parish
in the county of [or] of [or to the overseers of the
riding, etc.] to wit. } poor of the township of].

In pursuance of the provisions of the Act of Parliament of the Vict. c.
I require your attention to the following

INSTRUCTIONS:—

On or before the twentieth day of June you are to publish a notice signed by you, according to the form marked No. 2 (post, 1174) among the printed forms herewith sent.

The manner in which you are required to publish that notice is as follows; (that is to say), you are to fix one of the printed copies (each copy being first signed by you) on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish [or township], including chapels which do not belong to the established church, or if there should be no such church or chapel, then in some public and conspicuous situa-

tion in your parish [or township], and it must remain there during a period including two Sundays at least.

9. Schedules and Forms.

On or before the last day of July you are to make out an alphabetical list of all persons who may be entitled to vote in the election of a member [or members] to serve in Parliament for this city [or borough] in respect of the occupation of premises of the clear yearly value of £10, situate wholly or in part within your parish [or township], and another alphabetical list of all other persons (except freemen) who may be entitled to vote in the election for this city [or borough] by virtue of any other right whatsoever; and in making out each of the said lists you must write or cause to be written the christian and surname of every such person at full length, together with the place of his abode and the nature of his qualification; and when the qualification of any person shall be in respect of any property, you must state the name of the street, lane, and number of the house, if any, or other description of the place where such property may be situate.

And on and before the first day of August you are to publish written or printed copies of the said lists, signed by you, on every church or chapel in your parish [or township], in the same manner as before-mentioned with regard to the notice.

You are to keep also a copy of such lists, signed by you, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after the said lists shall have been published.

You are to make out a list, according to the form numbered 8 (post, 1176), containing the name of every person who shall have given or have caused to be given to you or any one of you, on or before the twenty-fifth day of August, his claim to have his name inserted in any list of your parish [or township], and also another list, according to the form numbered 12 (post, 1177), containing the name of every person against whom a notice of objection shall have been given to you or any one of you, on or before the twenty-fifth day of August, as not being entitled to have his name retained in any list for your city [or borough]; and on or before the first day of September you are to sign and publish each of such lists on every church or chapel in your parish [or township], in the same manner as before mentioned with regard to the notice.

You are to keep a copy of these lists, signed by you, and you are to allow the same, and also the notices of objection, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September, both inclusive, and you are to deliver a copy of each of such lists to any person requiring the same, on the payment of a price for each copy after the rate contained in the table marked Schedule (D.) No. 1, herewith sent.

If you shall find any such notice, list, register, or other document published by you as aforesaid to be destroyed, mutilated, effaced, or removed, you are forthwith to place another in its room to the same effect.

On or before the twenty-ninth day of August you are to deliver to me a copy of the list of voters, a copy of the list of claimants, and a copy of the list of persons objected to, so respectively made out and signed by you as aforesaid.

You are to attend the Court to be holden for the revision of the list of voters for your city [or borough], of the time of holding which notice will be given; and at the opening of such Court you are there to deliver to the barrister before whom the same shall be holden the several lists made out by you, and signed by you, and the original notices of objection and the original notice of claims given to you.

Herein if you fail you will be liable to the penalties in that case provided.

Given under my hand, this day of one thousand
eight hundred .

(Signed) A. B.

Town Clerk for the said borough.

No. 2.

Notice to be given by the Overseers.

City [or borough] of } We hereby give notice, that no person will be en-
in the } titled to have his name inserted in any list of voters
county of } for this city [or borough], now about to be made, in
to wit. } respect of the occupation of premises of the clear
yearly value of £10, whether situate wholly or in part within this parish [or
township], unless he shall pay on or before the twentieth day of July, all the
poor's rates and assessed taxes which have become due from him in respect of
such premises during the twelve calendar months next before the sixth day of
April last past; and all persons who omit to make such payments will be in-
capable of being upon the next register of voters for this city or borough.
Dated this day of June in the year one thousand eight
hundred

(Signed) A. B. } Overseers of the parish
C. D. } [or township] of
E. F. }

No. 3.

The list of persons entitled to vote in the election of a member [or members] for
the city [or borough] of , in respect of property occupied within the
parish [or township] of , by virtue of an Act passed in the second
year of the reign of king William the fourth, intituled "An Act to amend the
Representation of the People in England and Wales."

Christian name and surname of each voter at full length.	Place of abode.	Nature of qualification.	Street, lane, or other like place in this parish [or township], and number of house (if any), where the property is situated.

(Signed) A. B. } Overseers of the parish
C. D. } [or township] of
E. F. }

No. 4.

The list of all persons (not being freemen) entitled to vote in the election of a
member [or members] for the city [or borough] of , in respect of
any rights other than those conferred by an Act passed in the second year of the
reign of king William the fourth, intituled "An Act to amend the Representation
of the People in England and Wales."

Christian name and surname of each voter at full length.	Place of abode.	Nature of qualification.	Street, lane, or other place in this parish where the property is situate, and num- ber of the house (if any). [When the right of voting depends on property.]

(Signed) A. B. { Overseers of the parish of
C. D. { [or township]
E. F. { within the city [or bo-
rough] of

No. 5.

List of Freemen to be published by the Town Clerk (a).

*The list of freemen of the city [or borough] of [or of],
being a place sharing in the election with the city [or borough] of
entitled to vote in the election of a member [or members] for the said city [or
borough].*

Christian name and surname of each freeman at full length.	Place of his abode.

No. 6.

Notice of Claim.

To the overseers of the parish [or township] of .

*I hereby give you notice, that I claim to have my name inserted in the list made
by you of persons entitled to vote in the election of a member [or members] for the
city [or borough] of , and that the particulars of my qualification
and place of abode are stated in the columns below.*

*Dated the day of , one thousand eight hun-
dred .*

Christian name and surname of the claimant at full length.	Place of abode.	Nature of qualification.	Street, lane, or other place in the parish [or township], where the property is situate, and number of the house (if any). [<i>When the right depends on pro- perty.</i>]

(Signed) J. D.

No. 7.

Notice of Claim by Freemen to be given to the Town Clerk.

To the town clerk of the city [or borough] of .

*I hereby give you notice, that I claim to have my name inserted in the list made
by you of persons entitled as freemen to vote in the election of a member [or mem-
bers] to serve in Parliament for the city [or borough] of , and that
my qualification is as freeman of , and that I reside in
street, in this city [or borough, or, as the case may be].*

*Dated this day of , one thousand eight hundred
and .*

(Signed) J. D.

(a) This form must be signed by the town clerk. See the 6 Vict. c. 18, s. 14, ante, 1127.

9. Schedules
and Forms.

No. 8.

List of Claimants to be published by the Overseers.

The following persons claim to have their names inserted in the list of persons entitled to vote in the election of a member [or members] for the city [or borough] of

Christian name and surname of each claimant at full length.	Place of abode.	Nature of qualification.	Street, lane, or other place in this parish where the property is situate, and number of the house (if any). [<i>When the right depends on property.</i>]

(Signed) *A. B.* }
C. D. } Overseers of, etc.
E. F. }

No. 9.

List of Claimants to be published by the Town Clerk.

The following persons claim to have their names inserted in the list of the freemen of the city [or borough] of [or of], being a place sharing in the election with the city [or borough] of [or borough], entitled to vote in the election of a member [or members] for the said city [or borough].

Christian name and surname of each person, as in the claim.	Place of his abode.

No. 10.

Notice of Objection.

To the overseers of the parish [or township] of [or to the town clerk of the city [or borough] of [or otherwise, as the case may be].

I hereby give you notice, that I object to the name of [or] being retained in the list of persons entitled to vote in the election of a member [or members] for the city [or borough] of [or] Dated this [or] day of [or].

(Signed) *A. B.* of [place of abode], on the list of voters for the parish of [or].

Note.—If more than one list of voters, the notice of objection should specify the list to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

No. 11.

Form of Notice of Objection to be given to Parties objected to.

To Mr.

I hereby give you notice, that I object to your name being retained on the list of persons entitled to vote in the election of members [or a member] for the city [or borough] of

Dated this day of

(Signed) A. B. of [place of abode], on the list of voters for the parish of

No. 12.

List of Persons objected to, to be published by the Overseers.

The following persons have been objected to as not being entitled to have their names retained in the list of persons qualified to vote in the election of a member [or members] for the city [or borough] of

Christian name and surname of each person objected to.	Place of abode.	Nature of the supposed qualification.	Street, lane, or other place in the parish wherethe property is situate, and number of the house (if any). [<i>When the right depends on property.</i>]

(Signed) *A. B.* }
C. D. } *Overseers of, etc.*
E. F. }

No. 13.

The list of Persons objected to, to be published by the Town Clerks.

The following persons have been objected to as not being entitled to have their names retained on the list of the freemen of the city [or borough] of
, [or of] being a place sharing in the election with the
city [or borough] of, *entitled to vote in the election of a mem-*
ber [or members] for the said city [or borough].

Christian and surname of each person objected to.	Place of his abode.

(Signed) *A. B.* { *Town Clerk of the said city*
[or borough or place].

9. Schedules
and Forms.

SCHEDULE (D.).

No. 1.

Table of rates of payment to be demanded and paid for any list or copy of a list (other than a register), where a payment is required and authorized by this Act.

For any list or copy of a list containing any number of persons' names—

	s.	d.
Not exceeding 100 names	0	6
Exceeding 100 and not exceeding 200	1	0
Exceeding 200 and not exceeding 300	1	6
Exceeding 300 and not exceeding 400	2	0
Exceeding 400	2	6

No. 2.

Table of rates of payment to be demanded and paid for any copy of a register or part of any register, where a payment is required and authorized by this Act.

For every copy of any register or any part of any register containing any number of persons' names—

	s.	d.
Not exceeding 1000 names	1	0
Exceeding 1000 and not exceeding 3000	2	6
Exceeding 3000 and not exceeding 6000	5	0
Exceeding 6000 and not exceeding 9000	7	6
Exceeding 9000	10	0

SCHEDULE TO WHICH THE 17 & 18 VICT. c. 102, s. 11,
REFERS.

SCHEDULE (B.).

No. 1.

Proclamation to be used in Counties.

Election of knight, etc.

The sheriff of the county of _____ will, at the day of _____ now next ensuing, proceed to the election of a knight or knights, member or members [as the case may be] for the county or division of a county [as the case may be], at which time and place all persons entitled to vote at the said election are requested to give their attendance.

And take notice, that all persons who are guilty of bribery at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the "Corrupt Practices Act, 1854."

And take notice, that all persons who are guilty of treating or undue influence at the said election, will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the "Corrupt Practices Prevention Act, 1854."

Signature of the proper officer.

Notice of Election in Boroughs.

City or borough of _____ day of _____ .

In pursuance of a writ received by me, _____, for electing a burgess or burgesses [as the case may be], to serve in Parliament for the city or borough [as the case may be], I do hereby give notice, that I shall proceed to election accordingly on the _____ day of _____ at _____ o'clock, in _____, when and where all persons concerned are to give their attendance.

And take notice, that all persons who are guilty of bribery at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the "Corrupt Practices Prevention Act, 1854."

And take notice, that all persons who are guilty of treating or undue influence at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the "Corrupt Practices Prevention Act."

Signature of the proper officer.

SCHEDULES TO WHICH THE 28 VICT. c. 36 REFERS.

SCHEDULE (A.).

No. 1.

See this, *ante*, 1168.

Notice of Objection to be given to Parties already on Register objected to by any Person other than Overseers and to the occupying Tenant of the qualifying Property, where Notice is required to be given to the occupying Tenant.

◀ To Mr. _____ of _____ [here insert the name and place of abode of the person objected to as described in the list, and in the case of notice to the tenant of the qualifying property insert his name and place of abode as described in the list].

Take notice that I object to your name [in the notice to the tenant, instead of the words "your name," insert the name of the person objected to] *being retained in the* [here insert the name of the parish] *list of voters for the county of _____ [or for the _____ riding, etc.].*

And I ground my objection on the 1st column of the register, or on the 2nd column, or on the 3rd column,

and the objection relates

to the nature of your interest [in the notice to the tenant, instead of the words "your interest," insert "the interest of" here insert the name of the person objected to] *in the qualifying property;*

or to the value of the qualifying property;

or on the 4th column.

Dated this _____ day of _____ one thousand eight hundred and _____

(Signed)

A. B., of [place of abode], on the register of voters for the parish of _____.

9. *Schedules
and Forms.*

SCHEDULE (B.).

Form of Declaration by Voter as to his Place of Abode.

I, A. B., of [place of abode], on the list of voters for the parish [or township] of [in the county [or riding or division of the county] of], do solemnly and sincerely declare, that I possessed on the last day of July now last past the same qualification in respect of which my name has been inserted in such list, and that my true place of abode is now

(Signed) A. B. [Place of abode.]

<i>Made and subscribed before me the day of in the year .</i>	}	<i>C. D. [Signature of Justice, etc.] [Statement of his quality, as justice, etc.]</i>
---	---	--

SCHEDULES TO WHICH THE 30 & 31 VICT. c. 102, REFERS.

SCHEDULE (E.).

To A.B.

City [or borough] of

Take notice that you will not be entitled to have your name inserted in the list of voters for this city [or borough] now about to be made in respect of the premises in your occupation in [street or place] unless you pay on or before the twentieth day of July next all the poor rates which have become due from you in respect of such premises up to the fifth day of January last, amounting to £ , and if you omit to make such payment you will be incapable of being on the next register of voters for this city [or borough].

Dated the day of June, 18 .

*C. D. } Overseers,
E. F. }*

or

*G. H. { Assistant-
Overseer,*

or

I. K. Collector.

SCHEDULE (G.).

Form No. 1.

Claim of Lodger.

Borough of

To the overseers of the parish of

I hereby claim to be inserted in the list of voters in respect of the occupation

of the undermentioned lodgings, and the particulars of my qualification are stated in the columns below : 9. Schedules and Forms.

Christian name and surname at full length.	Profession, trade, or calling.	Description of lodgings.	Description of house in which lodgings situate, with number, if any, and name of street.	Name, description, and residence of landlord or other person to whom rent paid.

I the above-named _____, hereby declare that I have been during the twelve months immediately preceding the last day of July in this year the occupier as sole tenant of the above-mentioned lodgings, and that I have resided therein during the twelve months immediately preceding the said last day of July, and that such lodgings are of a clear yearly value, if let unfurnished, of £10 or upwards.

Dated the _____ day of _____.

Signature of claimant

Witness to the signature of the said

And I certify my belief in the accuracy of the above claim

Name of witness

Residence and calling

This claim must bear date the first day of August or some day subsequent thereto, and must be delivered to the overseers after the last day of July, and on or before the twenty-fifth day of August.

Form No. 2.

List of Claimants in respect of Lodgings to be published by the Overseers.

The following persons claim to have their names inserted in the list of persons entitled to vote in the election of a member [or members] for the city [or borough] of _____.

Christian name and surname of each claimant at full length.	Profession, trade, or calling.	Description of lodgings.	Description of House in which lodgings situate, with number, if any, and name of street.	Name, description, and residence of landlord or other person to whom rent paid.

(Signed)

A. B. } Overseers
C. D. } of
E. F. } etc.

Pauper.

Indictment on 2 Will. 4, c. 45, s. 19, against a voter for giving a false answer, at an election.

— (venue) } The jurors for our lady the queen upon their oath present, that
to wit. } heretofore, to wit, on the day of ,
in the year of the reign of our sovereign lady the now queen
Victoria, at a certain election for members to serve in Parliament for the county
of , to wit, at the parish of , in the county afore-
said, C. D., late of the parish aforesaid, in the county aforesaid, labourer, then
and there appeared as a voter at the said election, and then and there tendered his
vote as such voter; and that one C. D., a deputy of E. F. (which said E. F. was
then and there the returning officer at the said election), did then and there, at the
time of the said C. D. so tendering his said vote as aforesaid, put to the said C. D.
(being thereunto required by and on behalf of M. P., who was then and there a
candidate at the said election) the following question, that is to say, "Are you the
same person whose name appears as A. B. on the register of voters now in force
in the county of ()," to which question the said C. D. then and there
unlawfully and wilfully did falsely answer ("Yes"): Whereas in truth and in
fact the said C. D. was not the person whose name then and there appeared as
A. B. on the register of voters then in force for the said county, but then and there
was another and different person: against the form of the statute in such case
made and provided, and against the peace of our lady the queen, her crown and
dignity. [If a false answer be given to another of the questions, insert an-
other count to meet it.]

Pauper.

A defendant in a criminal proceeding is entitled to defend *in formâ pauperis*, if the Court will allow it. (*R. v. Wright*, Rep. T. Hard. 211; Com. Dig., *Formâ Pauperis*; Vin. Ab. *Paupers*; 1 Chit. C. L. 412; *Rex v. Page*, 1 Dowl. P. C. 507; *Reg. v. Nicholson*, 8 Dowl. 489; *R. v. Reynolds*, 1 Bl. 230.) The defendant should in support of the application make an affidavit that he is not worth £5 in the world, his wearing apparel only excepted.

But a party will not be allowed to prosecute an indictment *in formâ pauperis* without special cause shown. (*R. v. Clarke*, 3 Burr. 1308; *R. v. Wilkins*, 1 Dowl. 536.)

By the 2 Geo. 3, c. 28, s. 8, a person arrested on a *capias* or information relating to the customs, upon making affidavit that he is not worth £5, exclusive of his wearing apparel, may, at the discretion of such judge, be admitted to defend as a pauper, with the same privileges as those who may sue in this manner for the recovery of civil rights.

The mode for the party defending to obtain this benefit, is by making an affidavit before the judge or a commissioner of the Court, under the last-mentioned Act, that he is not worth £5, and then to petition to have a particular counsel and clerk assigned him. (Vin. Ab. *Paupers*, B.; 1 Chit. C. L. 413.)

An order cannot be made at the judge's chambers in vacation, for leave to prosecute *in formâ pauperis*; the order must be obtained in Court. (*R. v. Creswell*, 1 Chit. C. L. 413.)

When this admission is granted, it prevents the officers of the Court from taking fees, as well as those who are assigned to conduct the cause on the motion of the defendant. (*Hullock*. 228, n. 1.)

Pawnbrokers and Pawning.

[1 Jac. 1, c. 21; 30 Geo. 2, c. 24; 25 Geo. 3, c. 48; 39 & 40 Geo. 3, c. 99; 55 Geo. 3, c. 184; 5 Geo. 4, c. 107; 7 Geo. 4, c. 16; 9 Geo. 4, c. 49; 5 & 6 Will. 4, c. 62, s. 12; 2 & 3 Vict. c. 37, s. 3.]

By the 25 Geo. 3, c. 48, ss. 1, 3, 4, 12, every person exercising the trade of a pawnbroker shall take out a licence, and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting £50; to be recovered in the Courts at Westminster (*a*).

By the 9 Geo. 4, c. 49, s. 12, pawnbrokers' licences are to expire annually, on the 31st of July.

By the 55 Geo. 3, c. 184, *sch. part 1*, upon every licence to be taken out yearly for using or exercising the trade or business of a pawnbroker, within the cities of London and Westminster, or within the limits of the twopenny post, there shall be paid a duty of £15.

And for using or exercising the trade or business of a pawnbroker, elsewhere, £7. 10s.

By the 27 & 28 Vict. c. 56, s. 6, these duties are in future to be duties of excise.

By the 25 Geo. 3, c. 48, ss. 7 and 8, no person shall keep more than one house or shop by virtue of one licence; but persons in partnership need only take out one licence for one house. (See the 39 & 40 Geo. 3, c. 99, s. 23, *post*, 1199, as to placing the names over the doors of the shops, etc.)

Sec. 5. All persons who shall receive, by way of pawn, pledge, or exchange, any goods for the repayment of money lent thereon, shall be deemed pawnbrokers (*b*).

Sec. 6. But the same shall not extend to any person who shall lend money at £5 per cent. interest, without taking any further or greater profit for the loan thereof. (See also 39 & 40 Geo. 3, c. 99, s. 30, *post*, 1202.)

The 39 & 40 Geo. 3, c. 99, intituled "An Act for better Regulating the Business of Pawnbrokers," sect. 2, enacts that it shall be lawful for all persons using and exercising the trade or business of a pawnbroker, to demand, receive, and take of and from all and every person and persons applying or offering to redeem any goods or chattels pawned or pledged with such pawnbroker, a profit, after the following rates, over and above the principal sum and sums which shall have been lent and advanced upon the respective pledge or pledges, before any such pawnbroker shall be obliged to re-deliver the same (*videlicet*):

For every pledge upon which there shall have been lent any sum not exceeding 2s. 6d., the sum of $\frac{1}{4}$ d. for any time during which the said pledge shall remain in pawn not exceeding one calendar month, and the same for every calendar month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired (*d*):

(*a*) See now as to the penalty for not taking out a licence, the 19 & 20 Vict. c. 27, s. 2, *post*, 1204.

(*b*) See also the 19 & 20 Vict. c. 27, s. 1, *post*, 1203.

(*c*) The 17 & 18 Vict. c. 90, which

repeals all laws relating to usury, does not extend to pawnbrokers.

(*d*) Where the sum payable to a pawnbroker for interest on loan for a month, at the rate of 20 per cent., would be $\frac{3}{4}$ d. and one-fifth of a far-

*Pawnbrokers
and
Pawning.*

For every pledge upon which there shall have been lent the sum of 5*s.*,—1*d.* :

For every pledge upon which there shall have been lent 7*s.* 6*d.*,—1½*d.* :

For every pledge upon which there shall have been lent 10*s.*,—2*d.* :

For every pledge upon which there shall have been lent 12*s.* 6*d.*,—2½*d.* :

For every pledge upon which there shall have been lent 15*s.*,—3*d.* :

For every pledge upon which there shall have been lent 17*s.* 6*d.*,—3½*d.* :

For every pledge upon which there shall have been lent £1,—4*d.* ; and so on progressively and in proportion for any sum not exceeding 40*s.* :

For every pledge upon which there shall have been lent any sum of money exceeding 40*s.*, and not exceeding 42*s.*,—8*d.* :

And for every pledge upon which there shall have been lent any sum exceeding 42*s.* and not exceeding £10, at and after the rate of 3*d.* and no more (a) for the loan of every 20*s.* for all such money so lent, by the

thing, even if he is entitled to receive 1*d.* for a single month on account of the necessity of the case, he is not, therefore, on a loan for a longer period, entitled to treat the contract as a monthly contract, and to receive at the rate of 1*d.* a month for such period, when there would no longer be any difficulty in paying him at the exact rate of 20 per cent. (*Reg. v. Goodburn*, 3 N. & P. 468; 8 A. & E. 508, S. C.)

(a) The taking a greater rate subjects the pawnbroker to the penalties imposed by sect. 26, *post*, 1201; and the allowance of the specified rates is not merely a dispensation from the law of usury. (*R. v. Beard*, 12 East, 673; *post*, 1201, n. (a).) In *Cowie v. Harris*, it was held, that if a pawnbroker, upon one contract or bargain of loan, advance more than £10, viz. £100, and pretend to divide the same as if there were ten different loans, and for that purpose gives several tickets, dated on different days, the transaction is a mere contrivance to conceal usury, and is illegal and void. (1 *Moody & M. C. N. P.* 141.) Where a pawnbroker advanced £200 to a trader in distress, upon a deposit of silks, and entered the transaction in his books as several advances, each of less than £10, but amounting in the whole to £200, the trader having become bankrupt, and his assignee having sued in trover for the silks, the Court refused to disturb a verdict found for the plaintiff, upon a direction to the jury, to find whether the goods had been deposited on a contract to pay more than £5 per cent. interest. (*Tregoning v. Attenborough*,

7 Bing. 97; 4 M. & P. 722, S. C.) So in trover by assignees of a bankrupt against a pawnbroker, for certain goods, the defendant pleaded that the bankrupt pledged the goods with the defendant; to which the plaintiff replied, that it was corruptly agreed between the defendant and the bankrupt, that the defendant should advance him a sum exceeding £10, to wit, £77, and that the defendant should give day of payment for a year, redeemable in the meantime, contrary to the statute. It appeared at the trial, that the goods were deposited with the defendant, to secure more than £10 at one time:—It was held, that it sufficiently appeared upon the pleadings, that the contract was within the statute, and that this was proved at the trial. (*Nickisson v. Trotter*, 1 Jurist, 871; 3 M. & Wels. 130, S. C.)

But a pawnbroker, like any other person, may take more than the above specified rates of interest, and more than £5 per cent. on a contract, etc., provided the transaction is not with him in his business of a pawnbroker. And, therefore, although the 2 & 3 Vict. c. 37 (which allows the taking of more than £5 per cent. on contracts, and bills or notes not having more than twelve months to run, unless secured upon land, etc., or any estate or interest therein), by sect. 3, expressly provides that nothing herein contained shall extend or be construed to extend to repeal or affect any statute relating to pawnbrokers; but that all laws touching and concerning pawnbrokers to remain in full force and effect, to all intents

calendar month, including the current month; and so in proportion for any fractional sum :

Which said several sums shall be taken in lieu of and as a full satisfaction for all interest due, and charges for warehouse room (a).

*Pawnbrokers
and
Pawning.*

Sect. 3. In all cases where any intermediate sum, lent upon any pawn or pledge, shall exceed the sum of 2s. 6d., and not exceed the sum of 40s., the person lending the same shall and may take, by way of profit as aforesaid, at and after the rate of 4d. and no more for the loan of 20s. by the calendar month, including the current month as aforesaid.

Rate when the intermediate sum lent exceeds 2s. 6d. but does not exceed 40s.

Sect. 4. In all cases where the sum to be demanded, received, and taken, by any pawnbroker or pawnbrokers, his, her, or their servant or agent, of and from any person or persons applying or offering to redeem any goods or chattels pawned or pledged with such pawnbroker or pawnbrokers, either as profit upon any sum lent, or as part principal and part profit, shall amount to a total sum, of which the piece of money of the lowest denomination shall be one $\frac{1}{4}d$; and where the person or persons so applying, or offering to redeem such goods or chattels, shall have paid down the sum due for such principal and profit, or for such profit only (as the case may be), except the last remaining farthing, and shall not be able to produce and pay to such pawnbroker or pawnbrokers, his, her, or their servant or agent, a current farthing, and which shall be to the satisfaction and liking of such person or persons to receive the same, but shall, in lieu thereof, tender to such person or persons to receive the same one $\frac{1}{4}d$., in order to discharge the said remaining $\frac{1}{4}d$. so due as aforesaid, the said pawnbroker or pawnbrokers, his, her, or their servant or agent, to whom such tender of a $\frac{1}{4}d$. for such purpose as aforesaid shall be made, shall, in exchange thereof, deliver unto such person or persons so redeeming goods as aforesaid one good and lawful $\frac{1}{4}d$., of the current coin of this kingdom, or in default thereof, shall wholly abate the said remaining $\frac{1}{4}d$. from the total sum to be re-

Pawnbrokers to give farthings in change.

and purposes whatsoever, as if this Act had not been passed,—still a pawnbroker may, under circumstances, take more than £5 per cent. on a transaction, if he does not enter into it in his business and character of a pawnbroker. (*Pennell v. Attenborough*, 4 Q. B. 868.)

That was an action of trover to recover different articles which had been pledged with the defendant as a pawnbroker. The matter had come before the Court as a special case. The plaintiffs were assignees of a bankrupt who had been in the habit of pledging goods with the defendant. On the 8th of April, 1841, the bankrupt had pledged some property with the defendant, and an entry had been made in a book belonging to the defendant (but not according to the Pawnbrokers Act) to the following effect:—"To be held by him as a security for the payment of £115, this day lent, with interest thereon from the date hereof, at the rate of 15 per cent. per annum, until payment, and in default of payment on the 18th of October then next, I do hereby authorize and empower the

said R. Attenborough to sell and dispose of such articles either by public sale or private contract, and to repay himself thereout." No entry had been made by the defendant in a book pursuant to the 39 & 40 Geo. 3, c. 99, s. 6, and he did not give the bankrupt any duplicate. Upon this a question was raised whether the defendant was acting as a pawnbroker when he advanced the money. The Court considered that by the statute the pawnbroker was allowed to take 20 per cent. on goods pawned, but it did not mention any case where the sum should be above £10, assuming as it would seem, that no sum above that would ever be borrowed of a pawnbroker; but upon looking at the 2 & 3 Vict., and the case which had been decided upon that statute, the Court considered that usurious loans of this description were lawful, and the judgment would therefore be for the defendant.

See also *Fitch v. Rochfort*, 1 Mac. & G. 184; 18 L. J., *Chanc.* 458.

(a) Sect. 22, *post*, 1199, requires tables of interest to be put up.

*Pawnbrokers
and
Pawning.*

Limiting the profit for part of a month.

ceived by him or them, of such person or persons so redeeming goods or chattels as aforesaid (a).

Sect. 5. In all cases where the party or parties entitled to, and applying for the redemption of goods, pawned within the space of seven days after the expiration of the *first calendar month* after the same shall have been pledged, he, she, or they shall and may be at liberty to redeem the same, without paying anything by way of profit to the pawnbroker for the said seven days, or such part thereof as shall then have elapsed; and that, in all cases where the party or parties so entitled, and applying as aforesaid, after the expiration of the said first seven days, and before the expiration of the *first fourteen days* of the second calendar month, he, she, or they shall and may be at liberty to redeem such goods upon paying the profit payable for one calendar month, and the half of another calendar month, to the pawnbroker; but that, in all cases where the party or parties so entitled and applying as aforesaid, after the expiration of the said first fourteen days, and before the expiration of the said second calendar month, it shall be lawful for the pawnbroker to demand and take the profit of the whole second month; and that the like regulation and restriction shall take place, and be in force, in every subsequent calendar month wherein application shall be made for redeeming goods pawned.

Pawns to be entered in books to be kept (b).

Sect. 6. All and every person and persons who, from and after the commencement of this Act, shall take, by way of pawn or pledge, of or from any person or persons whomsoever, any goods or chattels, of what kind soever the same shall be, and whereon shall be lent any sum of money exceeding 5s., shall forthwith, and before he, she, or they shall or may advance or lend any money upon such pawn or pledge, enter, or cause to be entered, in a fair and regular manner, in a book or books to be kept by him, her, or them for that purpose, a description of the goods or chattels which he, she, or they shall receive in pawn, pledge, or exchange, and also the sum of money to be advanced or lent thereon, with the day of the month and year on which, and the name of the person or persons by whom such goods or chattels are so pawned, pledged, or exchanged, and the name of the street and number of the house, if the same shall be said to be numbered, where such person shall abide, and whether such person or persons is or are a lodger in or the keeper of such house, by using the letter "L" if a lodger, and the letter "H" if a housekeeper, and also the name and place of abode of the owner or owner of such goods and chattels, according to the information of the person pawning, pledging, or exchanging the same; into all which circumstances the pawnbroker is hereby required to inquire of the party pawning before any money shall be lent or advanced. And in all cases where the money lent on any such goods or chattels shall not exceed the sum of 5s., such entry shall be made in such book or books by all and every

(a) It was made a question, but not decided, in *R. v. Goodburn*, 8 A. & E. 508; 3 N. & P. 468, S. C., whether, where the exact sum due to a pawnbroker for interest would involve a fractional part of a farthing, he is entitled to the farthing. (See note (d), ante, 1183.)

(b) If the pawnbroker fail in making entries of the goods pledged with him, no property in the goods is vested in him, nor has he any lien on them for the money advanced. (*Fergusson v. Norman*, 5 Bingh. N. C. 76; 6 Scott, 794, S. C.) But if the pawn-

broker makes of the party pledging the inquiries directed by this section, and delivers to him a note or memorandum drawn up in accordance with the information thus supplied, he does not lose his right to the pledge or money advanced if that information proves untrue, unless the pawnbroker knew it to be so at the time when he made the note. (*Attenborough v. London*, 8 Ex. 661; 22 L. J., Ex. 251.)

This section does not apply to loans of more than £10. (*Pennell v. Attenborough*, ante, 1184, n.)

such person and persons so taking the same by way of pawn, pledge, or exchange as aforesaid within four hours next after the said goods and chattels shall have been so pawned, pledged, or exchanged as aforesaid; and every pledge upon which shall be lent any sum of money above 10s. shall be entered in the manner aforesaid in a book or books, to be kept for that purpose, separate and apart from all other pledges whatever; and every such entry of such pledge whereon shall be lent any sum of money exceeding 10s. shall be numbered in such book or books progressively as they are received in pawn in the manner following, viz., the first pledge that is received in pawn in the month of September next shall be numbered No. 1, the second No. 2, and so on progressively until the end of the month; and the first pledge that is received in the next month shall be numbered No. 1, and the second No. 2, and so on progressively and in like manner until the end of the month; and the like regulation with respect to the numbers of all pledges above 10s. shall be observed in every succeeding month throughout the year; and upon every note or memorandum respecting any such pledge, whereon shall be lent any sum exceeding 10s. as aforesaid, shall be fairly and legibly written or printed the number of the entry of such pledge so entered in such book or books as aforesaid; and every such person shall, at the time of the taking of every pawn, pledge, or exchange whatsoever, give to the person or persons so pawning, pledging, or exchanging the same a note or memorandum, fairly and legibly written or printed, or in part written and in part printed, containing therein, in like manner, a description of the goods and chattels which he, she, or they have received in pawn, pledge, or exchange, and also the sum of money advanced thereon, with the day of the month and year on which, and the name and place of abode, and number of the house, if said to be numbered, of the person or persons by whom such goods or chattels are so pawned, pledged, or exchanged, and whether such person is a lodger or housekeeper, as aforesaid, by using the letter "L" if a lodger, and the letter "H" if a housekeeper, and also the name and place of abode of the owner or owners thereof, according to the information aforesaid; and upon which said note or memorandum, or on the back part whereof, shall be moreover fairly written or printed the name and place of abode of the pawnbroker giving the same; which said note or memorandum the party and parties pawning, pledging, or exchanging the said goods or chattels shall, and he, she, or they is and are hereby required to accept and take in all cases; and the pawnbroker shall not receive and retain such pledge unless the parties pledging, or offering to pledge, the same shall accept and take such note or memorandum; and every such note where the sum lent shall be less than 5s. shall be delivered gratis (a); and where the sum lent shall be 5s. or upwards and less than 10s., such pawnbroker shall and may take $\frac{1}{2}$ d. for the same; and where the sum lent shall be 10s. or upwards, and less than 20s., such pawnbroker shall and may take 1d. for the same; and where the sum lent shall be 20s. or upwards and less than £5, the sum of 2d. for the same; and where the sum lent shall be £5 or upwards the sum of 4d., and no more; and which note shall be produced to the pawnbroker before he or she shall

Pawnbrokers to
give duplicates.

(a) By the 23 Vict. c. 21, after reciting this part of the section, it is enacted that, upon and from the commencement of this Act, it shall be lawful for all persons using and exercising the trade or business of a pawnbroker to take one $\frac{3}{4}$ d. for every such note or memorandum as aforesaid where the sum lent shall be less than 10s., anything in the said Act contained to the contrary notwith-

standing; and the said 6th section of the said Act shall be read and construed as if it contained no enactment for the delivery of any note or memorandum gratis.

Sect. 2 provides that, for every such note or memorandum where the sum lent shall be 10s. or upwards, the respective sum specified in such behalf in the said 6th section shall and may be taken as heretofore.

*Pawnbrokers
and
Pawning.*

Amount of profits to be indorsed on duplicates of pledges redeemed.

Penalty against unlawfully pawning goods the property of others (a);

from £5 to 20s., and the value of the goods; or imprisonment not exceeding three months, and whipping.

be obliged to redeliver the respective goods or chattels, except as herein-after is excepted. [See also 30 Geo. 2, c. 24, s. 4.]

Sect. 7. In all cases where any goods or chattels pawned or pledged shall be redeemed, the pawnbroker of whom the same shall be redeemed shall, at the time of such redemption, fairly and legibly write or indorse, or cause to be written or indorsed, upon every duplicate respecting such pawn or pledge, the amount of the profit taken by him, or on his account, on the money lent upon such goods or chattels so redeemed, and shall keep such duplicate in his custody for the space of one year then next following.

Sect. 8. If any person or persons shall knowingly and designedly pawn, pledge, or exchange, or unlawfully dispose of the goods or chattels of any other person or persons, not being employed or authorized by the owner or owners thereof so to do, it shall be lawful for any justice to grant his warrant to apprehend any person so offending; and if he, she, or they shall be thereof convicted, by the oath of any credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any justice or justices of the peace for the county, riding, division, city, liberty, town, or place where the offence shall be committed (which oath every such justice or justices as aforesaid is and are hereby empowered and required to administer), every such offender shall for every such offence forfeit any sum not exceeding £5 nor less than 20s., and also the full value of the goods or chattels so pawned, pledged, or exchanged, or disposed of, such value to be ascertained by such justice or justices; and, in case the said forfeiture shall not be forthwith paid, the justice or justices of the peace as aforesaid before whom such conviction shall be had shall commit the party or parties so convicted to the house of correction, or some other public prison of the county, riding, division, city, liberty, town, or place wherein the offender or offenders shall reside, or be convicted, there to remain and be kept to hard labour for a space not exceeding three calendar months, unless the said forfeitures shall be sooner paid (b), and if, within three days before the expiration of the said term of commitment, the said forfeitures shall not be paid, the said justice or justices, at his or their discretion, may order the person or persons so convicted to be publicly whipped (c) in the house of correction or prison to which the offender or offenders shall have been committed, or in some other public place, of the county, riding, division, city, liberty, town, or place where the offence shall have been committed, as to such justice or justices shall seem proper; and the said respective forfeitures, when recovered, shall be applied towards making satisfaction thereout to the party or parties injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by the

(a) The 1 Jac. 1, c. 21, enacts that the sale of any goods wrongfully taken to any pawnbroker in London, or within two miles thereof, shall not alter the property. And see the 30 Geo. 2, c. 24, s. 3.

(b) A. having deposited with B. certain goods as a security, a dispute arose concerning the goods, upon which B. obtained from C., a police magistrate, a summons requiring A.'s appearance on a day named. Upon the appearance before C., B. made oath to a written information that he believed the goods to have been illegally pawned or disposed of by A. C. gave a further day to the parties,

when, after evidence being gone into, C. committed A. for re-examination on a charge of suspicion of having unlawfully disposed of the goods of B. It was held, that the charge was not sufficiently made so as to give the magistrate jurisdiction over the matter under the above 8th section. (*Tate v. Chambers*, 3 Nev. & M. 523.)

Query, whether, in a case upon this statute, properly brought before a magistrate, the party may be committed for re-examination. (*Id.*)

(c) The whipping of females is abolished. See 1 Geo. 4, c. 57, post, "Whipping," Vol. VI.

justice or justices before whom such conviction shall be had; but if the party or parties injured shall decline to accept of such satisfaction and costs, or if there shall be any overplus of the said respective forfeitures, after making such satisfaction and paying such costs as aforesaid, then such respective forfeitures, or the overplus thereof (as the case shall happen) shall be paid and applied to and for the use of the poor of the parish or place where such offence shall have been committed, and shall be paid to the overseers of the poor of such parish or place for that purpose.

Sect. 9. If any person or persons whomsoever shall counterfeit, forge, or alter, or cause or procure to be counterfeited, forged, or altered, any such note or memorandum as aforesaid, or shall utter, vend, or sell any such note as aforesaid, knowing the same to be counterfeited, forged, or altered, with intent to defraud any person or persons whomsoever, in all, or any, or either of the said cases, such person or persons shall be punished in manner hereinafter mentioned; and it shall be lawful for any person or persons, his, her, or their servants or agents, to whom any note shall be uttered or produced, shown, or offered, which he, she, or they shall have reason to suspect to have been counterfeited, forged, or altered, to seize and detain such person or persons uttering, producing, showing, or offering the same, and to deliver him, her, or them, as soon as conveniently may be, into the custody of a constable, or other peace officer, who shall, and is hereby required, as soon as conveniently may be, to convey such person or persons before some justice or justices of the peace for the county, riding, division, city, liberty, town, or place wherein the offence shall be supposed to have been committed; and if, upon examination, it shall appear to the satisfaction of such justice or justices that the person or persons charged with having committed any such offence is or are guilty thereof, then, and in every such case the said justice or justices is and are hereby authorized and required to commit the party or parties offending to the common gaol or house of correction of the county, riding, division, city, liberty, town, or place wherein the offence shall be committed, there to be imprisoned for any time not exceeding the space of three calendar months, at the discretion of such justice or justices.

Forging, counterfeiting, or uttering duplicates (a).

Imprisonment

Sect. 10. In case any person or persons, who shall offer by way of pawn, pledge, exchange, or sale, any goods or chattels, shall not be able, or shall refuse to give a satisfactory account of himself, herself, or themselves, or of the means by which he, she, or they became possessed of such goods or chattels, or shall wilfully give any false information to the pawnbroker, or to his or her servant or servants, as to whether such goods or chattels are his, her, or their own property or not, or of his or her name and place of abode, or of the name and place of abode of the owner or owners of the said goods or chattels, or if there shall be any other reason to suspect that such goods or chattels are stolen, or otherwise illegally or clandestinely obtained (b), or if any person or persons

Persons not giving a good account of themselves on offering to pawn goods, liable to punishment (b).

(a) A person who utters a forged pawnbroker's duplicate may be indicted for uttering a forged accountable receipt for goods under 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. (*Reg. v. Fitchie*, 1 *Dear. & B.*, C. C. R. 175; 26 *L. J.*, M. C. 90.)

A pawnbroker's ticket is the subject of larceny, and is a warrant for the delivery of goods within sect. 5 of 7 & 8 Geo. 4, c. 29, and is well described in an indictment either as a warrant for the delivery of goods as

a pawnbroker's ticket or as a piece of paper. (*Reg. v. Morrison*, 1 *Bell*, C. C. 158; 28 *L. J.*, M. C. 210.)

(b) By the 66th section of the "Metropolitan Police Act," 2 & 3 Vict. c. 47, any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is authorized,

*Pawnbrokers
and
Pawning.*

not entitled, nor having any colour of title by law to redeem goods or chattels in pledge or pawn, shall attempt or endeavour to redeem the same, it shall be lawful for any person or persons, his, her, or their servants or agents, to whom such goods or chattels shall be so offered, or with whom such goods or chattels are in pledge, to seize and detain such person or persons, and the said goods or chattels, and to deliver such person or persons immediately into the custody of a constable or other peace officer, who shall and is hereby required, as soon as may be, to convey such person or persons, and the said goods or chattels so offered, before some justice or justices of the peace for the county, riding, division, city, liberty, town, or place, wherein the offence shall be supposed to have been committed; and if such justice or justices shall, upon examination and inquiry, have cause to suspect that the said goods or chattels were stolen, or illegally or clandestinely obtained, or that the person or persons offering and endeavouring to redeem the same shall not have any pretence or colour of right to redeem the same, it shall be lawful for such justice or justices to commit such person or persons into safe custody, for such reasonable time as shall be necessary for the obtaining proper information on the subject, in order to be further examined; and if, upon either of the said examinations, it shall appear to the satisfaction of such justice or justices that the said goods or chattels were stolen, or illegally or clandestinely obtained, or that the person or persons offering or endeavouring to redeem the same hath or have not any pretence or colour of right so to do, the said justice or justices is and are hereby authorized and required to commit the party or parties offending to the common gaol or house of correction of the county, riding, division, city, liberty, town, or place, wherein the offence shall be committed, there to be dealt with according to law, where the nature of the offence shall authorize such commitment by any other law; and where the nature of the offence shall not authorize such commitment by any other law, then such commitment shall be for any time not exceeding three calendar months, at the discretion of such justice or justices.

Persons buying or taking in pledge unfinished goods or linen, or apparel intrusted to others to wash or mend, to forfeit double the sum lent, and restore the goods. [And see 30 Geo. 2, c. 24, s. 6.]

Sect. 11. If any person or persons shall knowingly buy or take in as a pledge or pawn, or in exchange, any goods of any manufacture, or of any part or branch of any manufacture, either mixed or separate, or any materials whatsoever, plainly intended for the composing or manufacturing of any goods, after such goods or materials respectively are put into a state or course of manufacture, or into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials are completed or finished for the purposes of wear or consumption, or any linen or apparel, which goods, materials, linen, or apparel are or shall be intrusted to any person or persons to wash, scour, iron, mend, manufacture, work up, finish, or make up, and shall be convicted of the same, *on the oath* of one credible witness, or on confession of the party or parties, before one or more justice or justices, every such person or persons shall forfeit double the sum given for or lent on the same, to be paid to the poor of the parish, where the offence is committed, to be recovered in the same manner as any other forfeitures are by this Act directed to be recovered, and shall likewise be obliged to restore the said goods and materials to the *owner* or owners thereof, in the presence of the said justice or justices.

Empowering peace officers to search for unfinished goods etc., unlawfully

Sect. 12. If the owner or owners of any goods of any manufacture, or of any part or branch of any manufacture, either mixed or separate, or any materials whatsoever, plainly intended for the composing or manufacturing of any goods, after such goods or materials respectively are

and if in his power is required, to apprehend and detain the party, and as soon as may be to deliver him into the

custody of a constable, together with such property, to be dealt with according to law.

*Pawnbrokers
and
Pawning.*

come by, which
shall be restored
to the owner.
[And see 30 Geo.
2, c. 24, s. 9.]

put into a state or course of manufacture, or into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials are completed or finished for the purposes of wear or consumption, or any linen or apparel, which goods, materials, linen, or apparel are or shall be, so intrusted as aforesaid, unlawfully pawned, pledged, or exchanged, shall make out, either on his, her, or their oath, or by the oath of any credible witness, or, being one of the people called Quakers, by solemn affirmation, before any justice or justices of the peace, within his or their jurisdiction, that there is just cause to suspect that any person or persons, within the jurisdiction of any such justice or justices, hath or have taken to pawn, or by way of pledge, or in exchange, any such goods or materials, linen, or apparel, so intrusted as aforesaid, of such owner or owners, and without the privity or authority of such owner or owners thereof, and shall make appear to the satisfaction of any such justice or justices probable grounds for such the suspicion of the owner or owners thereof, then and in any such case, any justice or justices of the peace, within his or their jurisdiction, may issue his or their warrant for searching, within the hours of business, the house, warehouse, or other place of any such person or persons who shall be charged, on oath or affirmation as aforesaid, as suspected to have received or taken in pawn, or by way of pledge, or in exchange, any such goods or materials, linen or apparel, without the privity of or authority from the owner or owners thereof; and if the occupier or occupiers of any house, warehouse, or other place wherein any such goods, materials, linen, or apparel shall on oath or affirmation, as aforesaid, be charged or suspected to be, shall, after the commencement of this Act, on request made to him, her, or them, to open the same, by any peace officer authorized to search there by warrant from any justice or justices of the peace for the county, riding, division, city, liberty, town, or place in which such house, warehouse, or other place shall be situate, refuse to open the same, and permit the same to be searched, it shall be lawful for any peace officer to break open any such house, warehouse, or other place, within the hours of business, and to search as he shall think fit therein for the goods, materials, linen, or apparel suspected to be there, doing no wilful damage; and no pawnbroker or other person or persons shall oppose or hinder any such search; and if, upon the search of the house, warehouse, or other place of any such suspected person or persons as aforesaid, any of the goods, materials, linen, or apparel, which shall have been so pawned, pledged, or exchanged as aforesaid, shall be found, and the property of the owner or owners thereof shall be made out to the satisfaction of any such justice or justices, by the oath of one [or] more credible witness or witnesses, or if any such witness or witnesses shall be of the people called Quakers, by solemn affirmation, or by the confession of the person or persons charged with any such offence, any such justice or justices shall thereupon cause the goods, materials, linen, or apparel, found on any such search, and pawned, pledged, or exchanged, as aforesaid, to be forthwith restored to the owner or owners thereof.

Sect. 13. If the owner or owners of any goods or chattels unlawfully

Where goods are
unlawfully
pawned, the
pawnbroker to
restore them (a).

(a) This provision does not, it seems, take away the common law remedy, by demand and action of trover or detinue, and the real owner is not bound to tender the duplicate. (*Peet v. Baxter*, 1 Stark. 472; *Hartop v. Hoare*, 1 Wils. 8; 2 Stra. 1187; 3 Atk. 44, etc.; *Packer v. Gillies*, 2 Campb. 336; *sed vide Parker v. Patrick*, 5 T. R. 175.) There is no market overt for pawning. (*Ib.*, *ibid.*)

It would seem that where a person

pledges property to which he has no title, the pledgee may deliver it to the real owner, there being in the ordinary course of a pledge an implied undertaking on the part of the pledgor that the property pledged is his own, and on the part of the pledgee that he will return it to the pledgor, provided it be not the property of another. (*Cheeseman v. Exall*, 6 Ex. 341.)

*Pawnbrokers
and
Pawning.*

pawned, pledged, or exchanged, shall make out either on his, her, or their oath, or by the oath of any credible witness, or being one of the people called Quakers, by solemn affirmation, before any justice or justices of the peace within his or their jurisdiction, that such owner or owners hath or have had his, her, or their goods or chattels unlawfully obtained or taken from him, her, or them, and that there is just cause to suspect that any person or persons within the jurisdiction of any such justice or justices hath or have taken to pawn, or by way of pledge or in exchange, any goods or chattels of such owner or owners, and without the privy or authority of such owner or owners thereof, and shall make appear to the satisfaction of any such justice or justices probable grounds for such the suspicion of the owner or owners thereof, then and in any such case any justice or justices of the peace within his or their jurisdiction may issue his or their warrant for searching, within the hours of business, the house, warehouse, or other place of any such person or persons who shall be charged on oath or affirmation as aforesaid, as suspected to have received or taken in pawn, or by way of pledge or in exchange, any such goods or chattels, without the privy of or authority from the owner or owners thereof; and if the occupier or occupiers of any house, warehouse, or other place wherein any such goods or chattels shall, on oath or affirmation as aforesaid, be charged or suspected to be, shall, after the commencement of this Act, on request made to him, her, or them, to open the same by any peace officer authorized to search there, by warrant from a justice or justices of the peace for the county, riding, division, city, liberty, town, or place, in which such house, warehouse, or other place, shall be situate, refuse to open the same and permit the same to be searched, it shall be lawful for any peace officer to break open any such house, warehouse, or other place, within the hours of business, and to search as he shall think fit therein, for the goods or chattels suspected to be there, doing no wilful damage; and no pawnbroker, or other person or persons, shall oppose or hinder any such search; and if, upon the search of the house, warehouse, or other place of any such suspected person or persons as aforesaid, any of the goods or chattels which shall have been so pawned, pledged, or exchanged, as aforesaid, shall be found, and the property of the owner or owners from whom the same shall have been unlawfully obtained or taken, shall be made out to the satisfaction of any such justice or justices, by the oath of one or more credible witness or witnesses, or if any such witness or witnesses shall be of the people called Quakers, by solemn affirmation, or by the confession of the person or persons charged with any such offence, any such justice or justices shall thereupon cause the goods and chattels found on any such search, and pawned, pledged, or exchanged as aforesaid, to be forthwith restored to the owner or owners thereof" (a).

Penalty on pawnbroker who will not deliver up goods to pawnner (b).

Sect. 14. If any goods or chattels shall be pawned or pledged for securing any money lent thereon, not exceeding in the whole the princi-

(a) By the "Metropolitan Police Court Act," 2 & 3 Vict. c. 71, s. 28, any magistrate may order that any goods unlawfully pawned, pledged, or exchanged, which shall be brought before him, and the ownership of which shall be established to the satisfaction of such magistrate, shall be delivered up to the owner by the party with whom they were so unlawfully pawned, pledged, or exchanged, either without compensation, or with such compensation to the party in question as the magistrate may think fit. The Act also

contains many other provisions for the recovery of stolen goods.

(b) The pawnner of a chattel still retains his property in it (though qualified by the right existing in the pawnee), which he has a right to sell, and, by the sale, to transfer that property to the buyer; and if the pawnee on the buyer's tendering him the amount due, refuses to deliver it up, the buyer may maintain trover to recover it. (*Franklin v. Neate*, 13 M. & W. 481; 14 L. J. Ex. 59. See *Binstead v. Duck*, 2 W. Blackstone, 1117.)

pal sum of £10, and the profit thereof, and if within one year after the pawning or pledging thereof (proof having been made on oath or affirmation as aforesaid (a), by one or more credible witness or witnesses, and by producing the note or memorandum directed to be given by this Act as aforesaid, before any justice or justices, to the satisfaction of any such justice or justices, of the pawning or pledging of any such goods or chattels within the said space of one year, or one year and three months, as the case may be), any such pawner or pawners who was or were the real owner or owners of such goods or chattels at the time of the pawning or pledging thereof, his, her, or their executors, administrators, or assigns, shall tender unto the person or persons who lent, on the security of the goods or chattels pawned, his executors, administrators, or assigns, the principal money borrowed thereon, and profit, according to the table of rates by this Act established: and the person who took such goods or chattels in pawn, his or her executors, administrators or assigns, shall thereupon, *without showing (b) reasonable cause for so doing, to the satisfaction of such justice or justices, neglect or refuse to deliver back the goods or chattels so pawned*, for any sum or sums of money not exceeding the said principal sum of £10, to the person or persons who borrowed the money thereon, his, her, or their executors, administrators, or assigns, then and in any such case, on oath or affirmation as aforesaid thereof, made by the pawner or pawners thereof, his, her, or their executors, administrators, or assigns, or some other credible person, any justice or justices of the peace for the county, riding, division, city, liberty, town, or place, where the person or persons who took such pawn as aforesaid, his executors, administrators, or assigns shall dwell, on the application of the borrower or borrowers, his, her, or their executors, administrators, or assigns, is and are hereby required to cause such person or persons who took such pawn, his, her, or their executors, administrators, or assigns, within the jurisdiction of the justice or justices, to come before such justice or justices, and such justice or justices is and are hereby authorized and required to examine, on oath or solemn affirmation, as the case may require, the parties themselves, and such other credible person or persons as shall appear before him or them touching the premises; and if tender of the principal money due, and all profit thereon, as aforesaid, shall be proved by oath or affirmation as aforesaid to have been made (such principal money not exceeding the said sum of £10) to the lender or lenders thereof, his, her, or their executors, administrators, or assigns, by the borrower or borrowers of such principal money, his, her, or their executors, administrators or assigns, within the said space of one year, or one year and three months, as the case may be, after the said pawning or pledging of the goods or chattels, then on payment by the borrower or borrowers, his, her, or their executors, administrators,

(a) The 5 & 6 Will. 4, c. 62, substitutes a declaration for the oaths required by any Act in force for regulating the business of pawnbrokers. (See the enactment, *post*, 1208, and *ante*, tit. "Oaths.")

(b) A pawnee is bound to observe more than ordinary care over the thing bailed; and if goods be taken out of his possession through stealth or by want of due care, he will be liable, but not if the goods are forcibly taken out of his possession, unless through his fault. (*Sir W. Jones*, 75, 79; *Coggs v. Barnard*, *Lord Raym.* 917. And see *Clark v. Earnshaw*, *Gow's C. N. P.* 30.)

Where a pawnbroker was sum-

moned under this section for neglecting or refusing, without reasonable cause, to deliver back a watch pawned for a sum under £10, which had been stolen in consequence of the negligence of the pawnbroker, the justices made an order that he should restore it or pay the value and costs.—Held, that the order was bad under this section, though a valid order might be made under sect. 24, and as any amendment would prejudice the pawnbroker by depriving him of his right of appeal under sect. 35 the Court refused to amend, and remitted the case back to the justices. (*Shackell v. West*, 29 *L. J.*, *M. C.* 45; 2 *El. & El.* 326.)

*Pawnbrokers
and
Pawning.*

Imprisonment
till redelivery of
the goods, or sa-
tisfaction made.

Person pro-
ducing notes or
memorandums
deemed the
owner, as
against the
pawner of the
goods.

Unless pawn-
broker has had
notice from real
owner not to de-
liver, etc.

or assigns, of such principal money, and the profit due thereon, as aforesaid, to the lender or lenders, his, her, or their executors, administrators, or assigns, and in case the lender or lenders, his, her, or their executors, administrators, or assigns, shall refuse to accept thereof, on tender thereof to him, her, or them, made by the borrower or borrowers thereof, his, her, or their executors, administrators, or assigns, before any such justice or justices, such justice or justices shall thereupon, by order under his or their hand or hands, direct the goods or chattels so pawned forthwith to be delivered up to the pawner or pawners thereof, his, her, or their executors, administrators, or assigns; and if the person or persons who shall have lent any principal sum or sums of money, not exceeding in the whole the said sum of £10, on any goods or chattels pawned, his, her, or their executors, administrators, or assigns, shall neglect or refuse to deliver up, or make satisfaction for the goods or chattels, which shall be so proved to the satisfaction of such justice or justices as aforesaid to have been so pawned, as any such justice or justices of the peace as aforesaid shall order and direct, then any such justice or justices shall, and is and are hereby authorized and required to commit (a) the party or parties so refusing to deliver up or make satisfaction for the same, to the house of correction, or some other public prison for the county, riding, division, city, liberty, town, or place, wherein the offender or offenders shall reside or be convicted, there to remain without bail or mainprize, until he, she, or they shall deliver up the goods or chattels so pawned, and continuing redeemable as aforesaid, according to the order of such justice or justices as aforesaid, or make such satisfaction or compensation as such justice or justices shall adjudge reasonable for the value thereof, to the party or parties entitled to the redemption of such goods or chattels so pawned, and continuing redeemable as aforesaid.

Sect. 15. To prevent any inconvenience to persons carrying on the trade and business of a pawnbroker, from several different persons claiming a property in the same goods or chattels, be it further enacted, that from and after the commencement of this Act, any person or persons who shall at any time produce any such note or memorandum as aforesaid, to the person or persons with whom the goods therein specified were pawned or pledged, as the owner thereof, or as authorized by the owner thereof, to redeem the same, and require a delivery of the goods or chattels mentioned therein, to him, her, or them, such person or persons shall be, and is and are hereby deemed and taken to be, so far as respects the person or persons having such goods and chattels in pledge (b), the real owner and owners, proprietor and proprietors, of such goods and chattels, and the person or persons so using the said trade and business of a pawnbroker shall be, and is and are hereby directed and required, after receiving satisfaction pursuant to the provisions of this Act, respecting principal and profit, to deliver such goods and chattels to the person or persons who shall so produce the said note or memorandum to him, her, or them, and shall be, and is and are hereby indemnified for so doing, unless he, she, or they shall have had previous notice from the real owner or owners thereof not to deliver the same to the person or persons producing such note, or unless notice shall have been given to him, her, or them, that the goods and chattels pawned have been, or are suspected to have been, fraudulently or feloniously taken or obtained, and unless the real owner or owners thereof proceeds or proceed, in manner hereinafter provided and directed for the redeeming of goods and chattels

(a) This enactment is not in any way incorporated with sect. 24, *post*, 1199, so as to enable justices to commit under that section. (*Ex parte Cording*, 4 B. & Ad. 198; 1 N. & M. 35, S. C.)

(b) It will be observed, that this does not indemnify the pawnbroker against the real owner, where the goods have not been pawned by him, or by his authority.

pledged, where such note hath been lost, mislaid, destroyed, or fraudulently obtained from the owner or owners thereof.

Pawnbrokers and Pawning.

Sect. 16. In case any pawnbroker shall have had such previous notice as aforesaid, or in case any such note or memorandum as aforesaid shall be lost, mislaid, destroyed, or fraudulently obtained from the owner or owners thereof, and the goods and chattels mentioned therein shall remain unredeemed, that then and in every such case the pawnbroker or pawnbrokers with whom the said goods and chattels were so pledged, shall, at the request and application of any person or persons who shall represent himself, herself, or themselves to the pawnbroker as the owner or owners of the goods and chattels in pledge as aforesaid, deliver to such person or persons so requesting and applying for the same, a copy of the note or memorandum so lost, mislaid, destroyed, or fraudulently obtained as aforesaid, with the form of an affidavit [now a declaration] of the particular circumstances attending the case, printed or written, or in part printed and in part written, on the said copy, as the same shall be stated to him or her by the party applying as aforesaid, for which copy of such note or memorandum, and form of affidavit [now a declaration], in case the money lent shall not exceed the sum of 5s., the pawnbroker shall receive the sum of $\frac{1}{4}d.$; and in case the money lent shall exceed the sum of 5s., and not exceed the sum of 10s., the pawnbroker shall receive the sum of 1d.; and in case the money lent shall exceed the sum of 10s., the pawnbroker shall receive the like sum of money as he is entitled to receive and take on giving the original note or memorandum, such money to be paid by the party applying for the same at the time of making the said application; and the person or persons having so obtained such copy of the note or memorandum, and form of affidavit [now a declaration] as aforesaid, shall thereupon prove his, her, or their property in, or right to, such goods and chattels, to the satisfaction of some justice of the peace for the county, riding, division, city, town, liberty, or place, where the said goods or chattels shall have been pledged, pawned, or exchanged, and shall also verify, on oath or affirmation [now a declaration], as the case may be, before the said justice, the truth of the particular circumstances attending the case mentioned in such affidavit or affirmation [now a declaration] to be made as aforesaid, the caption of such oath or affirmation to be authenticated by the handwriting thereto of the justice before whom the same shall be made, and who shall, and is hereby required, so to authenticate the same; whereupon the pawnbroker shall suffer the person or persons proving such property to the satisfaction of such justice as aforesaid, and making such affidavit or affirmation as aforesaid, on leaving such copy of the said note or memorandum, and the said affidavit or affirmation with the said pawnbroker, to redeem such goods or chattels. [The 5 & 6 Will. 4, c. 62, s. 12, substitutes a declaration for the affidavit. See the enactment, *post*, 1208 (a).]

Where notes or memorandums lost, pawnbroker to deliver a copy to claimant of pawn.

Also a copy of a declaration of property.

Claimant on proof of right to pawn by such declaration, to be taken before a magistrate.

May redeem goods (a).

(a) On the 24th of July goods were pledged with the defendant, a pawnbroker, in the name of Mary Warne, and the duplicate was made out accordingly,—she was, in fact, the wife of the plaintiff, Vaughan, but it did not appear that this fact was then known to the defendant; a few days afterwards the same person applied to the defendant for a copy of the duplicate, and a form of declaration of the loss of it, pursuant to this section and the 5 & 6 Will. 4, c. 62, s. 12. On the 6th of August the plaintiff produced the duplicate to the defendant, and

demanding the goods, tendering the money advanced on them and interest, but the defendant refused to deliver them, on the ground of the declaration having been obtained. The plaintiff applied to a magistrate to compel him, and the defendant then (on the 9th of August) learnt that the party who pledged the goods was the plaintiff's wife:—Held, that upon these facts the judge at the trial was wrong in directing the jury that the detention of the goods was, in point of law, a conversion; and that he ought to have left it to them to say,

*Pawnbrokers
and
Pawning.*

Pawned goods
deemed forfeited
at end of year.

Pledges above
10s. to be sold by
auction (a).

Sect. 17. All goods and chattels which shall be pawned or pledged shall be deemed forfeited, and may be sold, at the expiration of one whole year, exclusive of the day whereon the goods and chattels were so pawned as aforesaid; and all goods and chattels so forfeited, on which any sum above 10s., and not exceeding £10, shall have been lent, shall be sold by public auction, and not otherwise, by the order of the person having the same in pawn, at and after the expiration of the said year; but the person employed to sell such goods and chattels by action shall, and he is hereby required to cause the same to be exposed to public view, and catalogues thereof to be published, containing the name and place of abode of the pawnbroker, and also the month such goods were received in pawn; and the number of every such pledge as entered in the book or books kept for that purpose, at the time the same were pawned, and an advertisement, giving notice of such sale, and containing the name or names and place of abode of the pawnbroker or pawnbrokers with whom the said goods or chattels were in pledge, and also the month such goods were received in pawn, to be inserted two several days in some public newspaper, two days at least before the first day of sale; and the goods and chattels pledged with every pawnbroker shall be inserted in every catalogue, separate and apart from each other, upon pain of forfeiting to the owner or owners of the said goods or chattels, for every offence in the premises, any sum not exceeding £10, nor less than 40s.

Pictures, prints,
books, statues,
etc., shall only
be sold four
times in a year,
etc.

Sect. 18. All pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, which shall be sold by public action as aforesaid, shall be sold by themselves, and without other goods being sold at such sale, four times only in every year; (that is to say) on the first Monday in the months of January, April, July, and October in every year, and on the following day and days, if the sale shall exceed one day, and at no other time; and the person who shall be employed to sell the same by auction shall, and he is hereby required to cause the same to be exposed to public view, and catalogues thereof to be published, and an advertisement giving notice of such sale, and containing the name or names of the pawnbroker or pawnbrokers with whom the said goods were in pledge, to be inserted two several days in some public newspaper, three days at the least before the first day of sale, upon pain of forfeiting to the owner or owners of the said goods, for every offence in the premises, any sum not exceeding £5, nor less than 40s.

whether the defendant had a *bond fide* doubt as to the title of the goods; and if so, whether a reasonable time for that doubt to be cleared up, by the party going before a magistrate and verifying the declaration, pursuant to the 39 & 40 Geo. 3, c. 99, s. 16, had elapsed on the 6th of August; and if it had, that the refusal then to deliver them to the plaintiff amounted to a conversion. (*Vaughan v. Watt*, 6 *Mee. & W.* 492.)

(a) But a pawnbroker has no right to sell unredemmed pledges after the expiration of the year, if the original owner tender the principal and interest due before actual sale. (*Walter v. Smith*, 5 *B. & Ald.* 439; 1 *D. & R.* 1, *S. C.*)

A pawnbroker who sells a chattel as a forfeited pledge, merely under-

takes that the subject of the sale is a pledge and irredeemable, and that he is not cognizant of any defect of title to it. (*Morley v. Attenborough*, 3 *Ex.* 500; 18 *L. J. Ex.* 148.)

The power of a pawnbroker to sell goods deposited as security for repayment of a loan upon a day certain, is in default of payment implied by law by the nature of the transaction, though no express stipulation was made to that effect. But where the day of payment has been rendered indefinite by subsequent agreement, the pawnee must give proper notice, and a notice that he will sell unless an excessive sum is given is not such a notice as will justify the sale. (*Pigot v. Cubley*, 15 *C. B.*, *N. S.* 701; 33 *L. J. C. P.* 134.)

*Pawnbrokers
and
Pawning.*

On notice from persons having goods in pledge not to sell, three months further allowed beyond the year for redemption (a).

Account of sales of pledges above 10s. to be entered by the pawnbrokers in a book;

and overplus paid to owner of goods pawned or sold, etc.,

on penalty of £10 and treble the sum lent on pawn.

Sect. 19. In case any person or persons entitled to redeem goods or chattels in pledge, shall, before or upon the expiration of the said one year from the time of pawning the same, give notice in writing, or in the presence of one witness, to the person or persons having the same in pledge, or leave the same at his, her, or their usual place of abode, not to sell the same at the end of the said one year, then, and in every such case, such goods or chattels shall not be sold or disposed of by the person or persons having the same in pledge until after the expiration of three calendar months, to be computed from the expiration of the said year, during which said term of three calendar months the owner or owners of the said goods and chattels shall have liberty to redeem the same, upon the terms stipulated and provided by this Act.

Sect. 20. All and every person or persons with whom any goods or chattels shall have been pawned or pledged, shall from time to time enter in a book or books, to be kept by him, her, or them for that purpose, a true and just account of the sale of all goods and chattels pawned with him, her, or them, for upwards of 10s.^(b), which shall be sold as aforesaid, expressing the day of the month when such goods were pledged, and the name of the person pledging the same, according to the entry made at the time of receiving the same in pawn; and also the day when, and the money for which, such goods or chattels pawned were sold, together with the name and place of abode of the auctioneer by whom the same were sold, according to the information thereof from the auctioneer; and in case any such goods or chattels shall be sold for more than the principal money and profit aforesaid due thereon at the time of such sale, the overplus shall, by every such pawnbroker, be paid, on demand, to the person by whom or on whose account such goods or chattels were pawned, his, her, or their executors, administrators, or assigns, in case such demand shall be made within three years after such sale, the necessary costs and charges of such sale being first deducted; and such person or persons who pawned or pledged such goods or chattels, or for whom such goods or chattels were so pawned or pledged, his, her, or their executors, administrators, or assigns, shall, for his, her, or their satisfaction in this matter, be permitted to inspect the entry to be made as aforesaid of every such sale, paying for such inspection the sum of 1d. and no more; and in case any person or persons shall refuse to permit any such person or persons who pawned or pledged such goods or chattels, or who is or are entitled to such overplus money, to inspect such entry as aforesaid in any such book or books, (such person or persons, if an executor or executors, administrator or administrators, or assignee or assignees, at such time producing his, her, or their letters testamentary, letters of administration or assignment) or in case the goods or chattels were sold for more than the sum entered in any such book or books, or if any such person or persons shall not make any such entry as aforesaid, or shall not have *bonâ fide*, according to the directions of this Act, sold the same, or shall refuse to pay such overplus, upon demand, to the pawner or pawners, owner or owners, his, her, or their executors, administrators, or assigns, (he, she, or they producing such their letters testamentary, letters of administration or assignment), every such person or persons so offending shall, for every such offence, forfeit the sum of £10, and treble the sum such goods and chattels shall originally have been pawned for, to the person or persons by whom or on whose account such goods or chattels were pawned, his, her, or their executors, administrators, or assigns, to be levied by distress and sale of the offender's goods and chattels, by

(a) See note (a), *ante*, 1196.

(b) A very unfair advantage has been generally taken by pawnbrokers of this distinction, where goods of considerably greater value than 10s.

are pledged for less than that amount; the absolute forfeiture of such goods being very commonly insisted upon. (*Mr. Evans's note in his Coll. Stat.*; 1 *Chit. Coll. Stat.* 757.)

*Pawnbrokers
and
Pawning.*

Pawnbroker
shall not pur-
chase goods
while in his cus-
tody.

Pledges not to
be taken from
persons under
twelve years of
age (a), or in-
toxicated.

Hours of buying
goods or taking
in limited.

warrant under the hands and seals of any two justices of the peace for the county, riding, division, city, town, liberty, or place, where the offence shall be committed. (See also the 30 Geo. 2, c. 24, s. 12.)

Sect. 21. No person or persons having any goods or chattels in pledge, shall, under any pretence whatsoever, either by himself or herself, or by any other person for him or her, purchase any such goods or chattels so being in pledge with him or her, during the time the same shall remain in his or her custody as such pledge, save and except at such public auction as aforesaid, nor shall suffer the same to be redeemed with a view or intention to purchase the same; nor shall any such person taking or having any goods or chattels in pledge, make or cause to be made any contract or agreement with any person or persons offering to pledge or pledging the same with the owner or owners of the pledge for the purchase, sale, or disposition of the said goods and chattels before the expiration of one whole year from the time of pawning or pledging the same; nor shall any pawnbroker purchase or receive or take any goods or chattels in pledge of or from any person or persons who shall appear to be under the age of twelve years (a), or to be intoxicated with liquor; or purchase or take in pawn, pledge, or exchange the note or memorandum aforesaid of any other pawnbroker; nor buy any goods or chattels in the course of his, her, or their trade or business, before the hour of eight of the clock in the forenoon, or after the hour of seven of the clock in the evening throughout the year; nor employ any servant or apprentice, or any other person under the age of sixteen years, to take in any pledge or pledges; nor receive or take in any goods or chattels by way of pawn, pledge, or in exchange, before eight of the clock in the forenoon (b), or after eight of the clock in the evening, between Michaelmas Day and Lady Day following; or before seven of the clock in the forenoon, or after nine of the clock in the evening, during the remainder of the year, excepting only until eleven of the clock on the evenings of Saturday throughout the whole year, and the evenings preceding Good Friday

(a) Also the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 50, imposes a penalty of not exceeding £5 on pawnbrokers purchasing or taking goods in pawn of or from any person apparently under the age of sixteen years.

(b) By the 9 & 10 Vict. c. 98, reciting part of the 21st section of 39 & 40 Geo. 3, c. 99, it is enacted, that from and after the twenty-ninth day of September next after the passing of this Act no pawnbroker shall receive or take in, or permit or suffer to be received or taken in, any goods or chattels by way of pawn, pledge or in exchange, before eight of the clock in the forenoon or after seven of the clock in the evening between the twenty-ninth day of September and the twenty-fifth day of March following, or before seven of the clock in the forenoon or after eight of the clock in the evening during the remainder of the year, excepting only until eleven of the clock on the evenings of Saturday throughout the year, and the evenings next preceding Good Friday and Christmas Day, and every fast or thanksgiving day

appointed by her Majesty; and in case any pawnbroker offend against the provisions of this Act, every such pawnbroker shall, for every such offence, on conviction thereof upon the oath of any one or more credible witness or witnesses, before any one or more of her Majesty's justices of the peace having jurisdiction over the place where such offence shall have been or shall be committed, forfeit and pay not less than 20s. nor exceeding £5, as such justice or justices shall adjudge; and every such penalty shall and may be levied, together with the costs attending the information, summons and conviction, by distress and sale of the goods and chattels of the offender or offenders, or person or persons liable to pay the same respectively, by warrant under the hand and seal or hands and seals of any justice or justices before whom such offender or offenders, person or persons, shall or may have been convicted; and every such penalty shall be applied and disposed of in like manner as forfeitures incurred for any offence against the last-recited Act.

and Christmas Day, and every fast or thanksgiving day to be appointed by his Majesty; nor shall any person or persons exercise or carry on the trade or business of a pawnbroker on any Sunday, Good Friday, Christmas Day, or on any fast day or thanksgiving day to be appointed as aforesaid.

*Pawnbrokers
and
Pawning.*

Sect. 22. All and every person and persons who shall follow and carry on the trade and business of a pawnbroker, shall cause to be painted or printed, in large legible characters, the rate of profit allowed by this Act to be taken by him, her, or them, and also the various prices of the notes or memorandums to be given by him, her, or them, according to the rates aforesaid, and an account of what notes and memorandums are to be delivered gratis, and of the expense of obtaining a second note or memorandum where the former one has been lost, mislaid, destroyed, or fraudulently obtained, and place the same in a conspicuous part or parts of the shop or other place wherein he, she, or they shall carry on such trade or business, so as to be visible to and legible by the persons pledging goods and chattels standing in the several boxes or places provided for such persons coming to pawn or redeem goods and chattels at such shop.

Pawnbrokers to place in view the table of profits, etc.

Sect. 23, for the better manifesting by whom the trade or business of a pawnbroker shall hereafter be carried on, enacts, that all and every person or persons who shall follow or carry on the trade or business of a pawnbroker, shall cause to be painted or written, in large legible characters, over the door of each shop or other place by him, her, or them respectively made use of for carrying on that trade or business, the *Christian and surname* (a) or names of the person or persons so carrying on the said trade or business, and the word "*Pawnbroker*," or "*Pawnbrokers*," as the case may be, following the same, upon pain of forfeiting the sum of £10 for every shop or place which shall be so made use of for the space of one week without having such name or names, and the said word, so painted or written as aforesaid, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace acting within the respective county, riding, division, city, town, liberty, or place (which warrant such justices are hereby authorized and required to grant), upon the confession of the party or parties, or upon the information of any credible witness or witnesses, upon oath or affirmation, as the case may be; and in case sufficient distress shall not be found, or such penalty shall not be forthwith paid, it shall be lawful for such justices, and they are hereby required by warrant under their hands and seals, to cause the offender or offenders to be committed to the county gaol or house of correction, there to remain without bail or mainprize, for any time not exceeding three calendar months, nor less than fourteen days, unless the said penalty, and all reasonable charges, shall be sooner paid and satisfied.

Pawnbroker's names and business to be placed over his door, on penalty of £10, etc. (a).

Distress.

Commitment.

Sect. 24. If in the course of any proceedings before any justice or justices of the peace in pursuance of or under this Act, it shall appear, or be proved to the satisfaction of the justice or justices upon oath or solemn affirmation, that any of the goods and chattels pawned as aforesaid have been sold before the time allowed by this Act, or otherwise than according to the directions of this Act, or have been embezzled or lost (b),

Pawnbrokers selling goods before limited time, or injuring them, etc., shall make a reasonable satisfaction on penalty of £10.

(a) An agreement for a secret partnership is a contravention of the laws regulating the business of a pawnbroker, and that no legal partnership was constituted thereby. (*Armstrong v. Armstrong*, 3 Mylne & K., 45; *Gordon v. Howden*, 12 Cl. & F. 237;

Fraser v. Hill, 1 Macq. H., L. C. 392. And see *Armstrong v. Lewis*, 2 Cr. & M. 274.

(b) A pawnbroker is not answerable for pledges destroyed by accidental fire, without proof of its having been caused by default or neglect. (*Syred*

*Pawnbrokers
and
Pawning.*

or are become or have been rendered of less value than the same were at the time of pawning or pledging thereof, by or through the default, neglect, or wilful misbehaviour (a) of the person or persons by whom the same were so pledged or pawned, his, her, or their executors, administrators, or assigns, agents or servants, then and in any such case it shall be lawful for every such justice and justices, and he and they is and are hereby required, to allow and award a reasonable satisfaction to the owner or owners of such goods or chattels in respect thereof, or of such damage; and the sum or sums of money so allowed or awarded, in case the same shall not amount to the principal and profit aforesaid, which shall appear to be due to any person or persons with whom the same were so pledged or pawned, his, her, or their executors, administrators, or assigns, shall be deducted out of the said principal and profit; and in all cases where the goods and chattels pawned as aforesaid shall have been damaged as aforesaid, it shall be sufficient for the pawner or pawners, his, her, or their executors, administrators, or assigns, to pay or tender the money due upon the balance, after deducting out of the principal and profit as aforesaid, for the goods or chattels pawned, such reasonable satisfaction in respect to such damage, as any such justice or justices shall order or award, and upon so doing, the justice or justices shall proceed as if the pawner or pawners, his, her, or their executors, administrators, or assigns, had paid or tendered the whole money due for the principal and profit aforesaid; and if the satisfaction to be allowed and awarded to the owner or owners of such goods or chattels, shall be equal to or exceed the principal and profit aforesaid, then and in such case the person or persons to whom the same were so pledged or pawned, his, her, or their executors, administrators, or assigns, shall deliver the goods and chattels so pledged to the owner or owners thereof, without being paid anything for principal or profit in respect thereof, and shall also pay such excess (if any) to the person or persons entitled thereto, under the penalty of £10, to be recovered and applied in manner hereinafter mentioned (b).

Pawnbrokers shall produce their books when necessary, on penalty from £10 to £5.

Sect. 25. It shall be lawful for any justice of the peace, upon complaint made to him on the oath or affirmation of one or more credible witness or witnesses, wherein any information shall be laid against any pawnbroker, for having offended against this Act, or respecting any dispute between any pawnbroker and person having pawned goods, or the owner or owners of goods pawned, or respecting any felony or other matter, or on any other occasion whatsoever, which in the judgment of any justice or justices shall make the production of any book, note, voucher, memorandum, duplicate, or other paper necessary, which shall or ought to be in the hands, custody, or power of any pawnbroker, to summon such pawnbroker before him to attend, with all and every or any book, note, voucher, memorandum, duplicate, or paper which he or she may or ought to have in his or her custody or power relating to the same, which he or she is hereby required to produce before such justice or justices, in the state the same was or were made at the time the pawn or

v. *Carruthers*, 27 *L. J.*, *M. C.* 273; *E. B. & E.* 469.) See as to pledges stolen through the negligence of the pawnbroker, *Shackell v. West*, ante, 1193. Leaving valuable goods in a pawnbroker's house during the night without any one in the premises, will justify magistrates in making an order for compensation under this section. (*Heating v. Cattrell*, 6 *Jur.*, *N. S.*, 96, *Q. B.*)

(a) It seems that these words

"through the default," etc., apply to all cases previously mentioned, and not only to that of the goods pawned having become of less value. (*Ex parte Cording*, 4 *B. & Ad.* 198; 1 *Nev. & M.* 35, *S. C.*)

(b) Justices have no power, for offences within this 24th section, to commit the offender in case he makes default in payment of the satisfaction awarded. (*Ex parte Cording*, 4 *B. & Ad.* 198; 1 *Nev. & M.* 35, *S. C.*)

pledge was received, without any alteration, erasement, or obliteration whatsoever; and in case such pawnbroker shall neglect or refuse to attend, or to produce the same in its true and perfect state, such pawnbroker shall, in case he or she doth not show good cause for such neglect or refusal, to the satisfaction of such justice or justices, forfeit any sum not exceeding £10 nor less than £5, to be levied and applied in the manner hereinafter mentioned.

Sect. 26. In case any pawnbroker shall in anywise *offend against this Act*, every such pawnbroker shall, for every such offence in neglecting to make or cause to be made, in a fair and regular manner, in such book or books as aforesaid, any such entry as is required to be made by him, her, or them by this Act, forfeit such sum of money as to the justice or justices, before and by whom any information thereon shall be heard and determined, in his or their discretion shall seem reasonable and fit, not exceeding the sum of £10; and *for every other offence against this Act, where no forfeiture or penalty is provided or imposed on any particular or specific offence against any part of this Act*, not less than 40s., nor more than £10; and that all forfeitures incurred by any offence committed against this Act shall and may be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal, or hands and seals, of any justice or justices of the peace for the county, riding, division, city, liberty, town, or place where the offence shall be committed; and the justices shall award one moiety of the said penalties to the parties complaining, and the remainder of the aforesaid penalty or penalties, not otherwise disposed of and applied by this Act, is to be paid and applied to and for the use of the poor of the parish or place where the offence shall have been committed, and shall be paid to the overseers of the poor of such parish or place for that purpose (a).

Sect. 27. No person or persons using or exercising the trade or business of a pawnbroker shall be subject or liable to any prosecution or information, before any justice or justices of the peace, by virtue of this Act, for any offence or offences against this Act, unless information shall be given of such offence or offences within twelve calendar months next after the offence or offences committed; and that all and every such information and informations shall be given and prosecuted before such justice or justices of the peace, as shall act as such justice or justices near to the place where such offence or offences shall have been committed, unless the same shall have been committed within the city or liberties of London.

Sect. 28. The churchwardens and overseers of the poor of any parish or place, where any offence shall be supposed to have been committed by any pawnbroker against this Act, or some or one of such officers, at the discretion or direction of any justices of the peace, on having notice from such justice of the peace, of such offence being supposed to have been committed, shall, and they or some or one of them, to be nominated by such justice as aforesaid, are and is hereby required to prosecute every offender for every offence, so to be suggested by such justice to have been committed against this Act, at the expense of the respective parish

Pawnbrokers and Pawning.

Penalties on pawnbrokers, in neglecting entries, not exceeding £10, and for other offences from 40s. to £10 (a).

For other offences against the Act.

Penalties enforceable by distress.

Application of penalties.

Limiting time of prosecution by information.

Information to be made before a justice near the place.

Churchwardens, etc., to prosecute, etc.

(a) If a pawnbroker takes a greater rate of interest than that stipulated by sects. 2 and 3, it is an offence against this Act, and as no particular penalty is provided for that transgression, it falls within the general words of this section. (*R. v. Beard*,

12 *East*, 673.) A common informer may lay an information against a pawnbroker for an offence under 39 & 40 Geo. 3, c. 99, and under sect. 26 is entitled to a moiety of the penalty. (*Caswell v. Morgan*, *El. & El.* 809; 28 *L. J.*, *M. C.* 208.)

Pawnbrokers and Pawning. whereof they or he are, is, or shall be for the time being such officers or officer.

Convicted persons, etc., not to prosecute or inform against persons, etc.

Act not to extend to persons lending money at £5 per cent. without further profit.

Act to extend to executors, etc., of pawnbrokers.

General issue.

Double costs.

Inhabitants competent witnesses (a).

Form of conviction.

Sect. 29. No person who has been convicted of any fraud, or of obtaining money under false pretences, or of any felony whatsoever, shall be allowed to prosecute or inform against any person or persons, for any offence or offences committed against this Act.

Sect. 30. Nothing in this Act contained shall extend, or be construed to extend, to any person or persons whomsoever, who shall lend money to any person or persons whomsoever upon pawn or pledge, at the rate of £5 per centum per annum interest, without taking any further or greater profit for the loan or forbearance of such money lent, on any pretence whatsoever. (See also the 25 Geo. 3, c. 48, s. 6, *ante*, 1183.)

Sect. 31. All and every the provisions, regulations, and clauses contained in this present Act shall, from and after the end of this present session of Parliament, extend to and include the executors, administrators, and assigns of all and every deceased pawnbroker, in the same manner as the same extend to and include the pawnbroker when living, save and except that no such executor or administrator of any such deceased pawnbroker shall be answerable for any penalty or forfeiture personally, or to be paid out of his, her, or their own moneys or estate, unless the same shall be incurred and forfeited by his, her, or their own act or neglect.

Sect. 32. If any person or persons shall at any time or times be sued, molested, or prosecuted, for anything by him, her, or them done or executed in pursuance of this Act, or of any clause, matter, or thing herein contained, such person or persons may plead the general issue, and give the special matter in evidence for his, her, or their defence; and if upon the trial a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall become nonsuited, then such defendant or defendants shall have double costs awarded to him, her, or them against such plaintiff or plaintiffs. (But by the 5 & 6 Vict. c. 97, s. 2, the defendant is now entitled only to a full indemnity against costs, and not to double costs.)

Sect. 33. In all actions, suits, informations, trials, and other proceedings in pursuance of this Act, or in relation to any matter or thing herein contained, any inhabitant of the parish, town, or place in which any offence or offences shall be committed, contrary to the true intent and meaning of this Act, shall be admitted to give evidence, and shall be deemed a competent witness, notwithstanding his or her being an inhabitant of the parish, town, or place wherein any such offence or offences shall be supposed to have been committed.

Sect. 34. The justice or justices before whom any person shall be convicted, in manner prescribed by this Act, shall cause such respective conviction to be drawn up in the form or to the effect following (that is to say):—

_____ } Be it remembered, that on this _____ day of _____, to wit. } in the _____ year of his Majesty's reign, A. B. is convicted before _____ of his Majesty's justices of the peace for the said county of _____, [or, for the _____ riding or division of the said county of _____, or, for the city, liberty, or town of _____, as the case shall happen to be] for _____, and the said do adjudge him [or, her] to pay and forfeit for the same the sum of _____ . Given under _____, the _____ day and year aforesaid.

(a) All objections to the competency of witnesses on the ground of interest are done away with by the 6 & 7

Vict. c. 85, and the 14 & 15 Vict. c. 99. (See tit. "Evidence," Vol. II.)

And the said justice or justices before whom such conviction shall be had, shall cause the same, so drawn up in the form or to the effect aforesaid, to be fairly written upon parchment and transmitted to the next general or quarter session of the peace to be held for the county, riding, division, city, town, liberty, or place wherein such conviction was had, to be filed and kept amongst the records of the said general or quarter session; and in case any person or persons so convicted shall appeal from the judgment of the said justice or justices to the said general or quarter session, the justices in such general or quarter session are hereby required, upon receiving the said conviction, drawn up in the form or to the effect aforesaid, to proceed to the hearing and determination of the matter of the said appeal at such next session, and not afterwards, according to the directions of this Act; any law, custom, or usage to the contrary notwithstanding: and no *certiorari* shall be granted to remove any conviction or other proceedings had thereon in pursuance of this Act.

*Pawnbrokers
and
Pawning.*

To be filed.

Certiorari.

Sec. 35. If any person convicted of any offence or offences punishable by this Act shall think himself or herself aggrieved by the judgment of the justice or justices before whom he or she shall have been convicted, such person shall have liberty to appeal to the justices at the next general or quarter session of the peace which shall be held for the county, riding, division, city, liberty, town, or place where such judgment shall have been given, and that the execution of the said judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and be forthcoming to abide the judgment and determination of the justices, in their said next general or quarter session, and to pay such costs as the said justices in such session shall award on such occasion, which recognizance the said justice or justices before whom such conviction shall be had, is and are hereby empowered and required to take; and the justices in the said general or quarter session are hereby authorized and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if, upon the hearing of the said appeal, the judgment of the justice or justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the justices in the said general or quarter session shall award to be paid for defraying the expenses sustained by the defendant or defendants in such appeal, or, in default of making such payment, shall suffer the respective pains and penalties by this Act inflicted upon persons respectively who shall neglect to pay, or shall not pay the respective sums or forfeitures by this Act to be paid by or imposed upon persons respectively, who shall be convicted by virtue of this Act.

Appeal.

Recognizance of.

Costs.

Sec. 36 makes it a public Act.

Public Act.

By the 19 & 20 Vict. c. 27, after reciting that under and by virtue of the 25 Geo. 3, c. 48, all persons using or exercising the trade or business of a pawnbroker in Great Britain are required to take out a licence annually for that purpose in the manner prescribed by the said Act, under the penalty of £50 for any neglect in that behalf; and such licences are chargeable with certain stamp duties granted and imposed thereon by the 55 Geo. 3, c. 184; and that the 39 & 40 Geo. 3, c. 99, was passed for better regulating the business of pawnbrokers: and that attempts are made to evade the provisions of the said Acts by persons who receive goods and chattels into their possession, and advance money thereon, under the pretence that the transaction is a sale and purchase of such goods and chattels, and not a receiving or taking of the same by way of

55 Geo. 3, c. 184.
39 & 40 Geo. 3,
c. 99.

*Pawnbrokers
and
Pawning.*

Persons herein
described
deemed to be
pawnbrokers.

pawn or pledge; it is enacted, the following shall be deemed to be persons using and exercising the trade and business of a pawnbroker within the meaning of the several Acts aforesaid, and subject and liable to all the provisions and regulations thereof in relation to pawnbrokers, as well as the persons who by or under the said Acts or any of them are declared or deemed to be persons using or exercising the said trade or business (that is to say), every person who shall keep a house, shop, or other place for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and shall purchase or receive or take in any goods or chattels, and pay or advance or lend thereon any sum of money not exceeding £10, with or under any agreement or understanding, express or implied, or which from the nature or character of the dealing may reasonably be inferred, that such goods or chattels may be afterwards redeemed or repurchased on any terms whatever.

Penalty on persons declared or deemed to be pawnbrokers not taking out proper licences.

Penalties recoverable by summary information.

Power to justices to mitigate penalties.

Sect. 2. If any person by or under this Act or the several Acts aforesaid or any of them declared or deemed to be a person using and exercising the trade or business of a pawnbroker shall neglect or omit to take out the proper licence in that behalf, he shall forfeit the sum of £50, which shall be recoverable by information before any justice of the peace in the name of an officer of inland revenue prosecuting for the same on behalf of her Majesty; and in every information or other proceeding for the recovery of such penalty it shall be a sufficient description of the offence to charge that the defendant did use and exercise the trade and business of a pawnbroker without taking out a proper licence in that behalf; and upon the conviction of such defendant, the like proceedings shall be had for the levying of the penalty or for the recording of such conviction, and for the appeal of the defendant if he shall feel himself aggrieved thereby, as are provided by law, and may be adopted with regard to any penalty incurred under the said Act of the thirty-ninth and fortieth years of king George the third: Provided always, that it shall be lawful for the justice before whom any such defendant shall be convicted to mitigate or lessen the said penalty, if he shall think fit, to any sum not less than one-fourth thereof; provided also, that any proceeding authorized or directed by the said recited Acts or this Act to take place before a justice of the peace may, in Scotland, take place before the sheriff of the county in which the proceeding is instituted, or his substitute; but no appeal shall lie from the judgment of any sheriff to the quarter sessions of the peace, nor shall any other appeal lie, save from the judgment of the sheriff substitute to the sheriff, whose decision shall in all cases be final, and not subject to review.

By the 22 & 23 Vict. c. 14, the provisions and enactments contained in sects. 32-35 of the 2 & 3 Vict. c. 71, for regulating the police Courts in the metropolis, shall extend, and be construed, deemed, and taken to extend to the 39 & 40 Geo. 3, c. 99, and to all parts of England, in the same manner and to the same extent, and to all intents and purposes as if the said provisions and enactments were herein repeated and set forth at length; provided, that whenever the word "magistrate" is used in the said sections, or any of them, it shall be construed, deemed, and taken for the purposes of this Act, to mean any stipendiary magistrate or other justice or justices of the peace for the district, county, riding, division, city, liberty, town, or place where the offence has been committed.

The incorporated sections are as follows:—

Amends may be awarded for frivolous information.

Sect. 32. And whereas informations are often laid for the mere sake of gain, or by parties not truly aggrieved, and the offences charged in such informations are not further prosecuted, or it appears upon prosecution that there was no sufficient ground for making the charge; be it enacted, that in every case in which any information or complaint of any

offence shall be laid or made before any of the said magistrates, and shall not be further prosecuted, or in which, if further prosecuted, it shall appear to the magistrate by whom the case shall be heard that there was no sufficient ground for making the charge, the magistrate shall have power to award such amends, not more than the sum of £5, to be paid by the informer to the party informed or complained against, for his loss of time and expenses in the matter, as to the magistrate shall seem meet.

Sect. 33. That in case any person shall lodge any information before any of the said magistrates for any offence alleged to have been committed by which he was not personally aggrieved, and shall afterwards directly or indirectly receive, without the permission of one of the said magistrates, any sum of money or other reward for compounding, delaying, or withdrawing the information, it shall be lawful for any one of the said magistrates to issue his warrant or summons, as he may deem best, for bringing before him the party charged with the offence of such compounding, delay, or withdrawal; and if such offence be proved by the confession of the party, or by the oath of any credible witness, such informer shall be liable to a penalty not more than £10.

Penalty on common informers for compounding informations.

Sect. 34. And whereas by divers Acts the moiety or other fixed portion of the penalties to be thereby recovered is directed to be adjudged to the informer, and the same has been found to encourage the corrupt practices of common informers; for prevention thereof be it enacted, that where by any Act now in force or hereafter to be passed a moiety or other fixed portion of the penalty or penalties thereby imposed is or shall be directed to be paid to the informer, not being the party aggrieved, it shall be lawful for any one of the said magistrates before whom the conviction shall be had to adjudge that no part or such part only of the penalty as he shall think fit shall be paid to the informer.

Power to lessen the share of informers.

Sect. 35. And whereas by divers Acts certain limited penalties or terms of imprisonment are imposed for offences therein mentioned, and sufficient power is not given to the justice or justices before whom the offender is convicted to reduce or lessen such penalty or term of imprisonment, whereby much hardship is experienced; be it enacted, that where by any Act now in force or hereafter to be passed a limited penalty or term of imprisonment is imposed on conviction of an offender before a justice or justices of the peace, it shall be lawful for any one of the said magistrates before whom such conviction shall be had to reduce or lessen such penalty or term of imprisonment in such manner as he may think fit: Provided always, that no penalty for the infringement of any Act relating to the revenue of customs or excise, stamps or taxes, shall be reduced by any such magistrate below the amount or proportion allowed in that behalf by the Act or Acts specially relating thereunto without the consent of the commissioners of customs or excise or stamps and taxes respectively,

Power to mitigate penalties.

Proviso as to revenue Acts.

By the 30 Geo. 2, c. 24, s. 16, any justice unto whom complaint upon oath shall be made of any offence committed against this Act, shall issue his warrant for bringing before him, or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction; and if it shall appear upon oath, to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor, or of the person accused, and who will not voluntarily appear, he shall issue his summons to convene him to give his evidence; and, if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him; and on his appearance, if he

30 Geo. 2, c. 24.

Compelling attendance of offender and witnesses.

*Pawnbrokers
and
Pawning.*

shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the public prison for any time not exceeding three months; and if, on such examination, the justice shall deem the evidence of any such witness to be material, he may bind over such witness, unless a feme covert, or under the age of twenty-one years, by recognizance in a reasonable penalty, to appear and give evidence at the next sessions or assizes.

No fees to be
taken.

By sect. 13, no fee or gratuity shall be taken for any summons or warrant granted by any justice or justices, in pursuance of this Act, so far as the same relates to goods pawned, pledged, taken in exchange, or unlawfully disposed of.

By the 55 Geo. 3, c. 137, s. 2, and be it further enacted that the overseers of the poor, or other person or persons who may be appointed for the ordering, regulating, managing, or providing for the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, jointly with or independent of such overseers of the poor, shall or may, and they are hereby authorized and empowered, to cause all such goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things capable of being marked and from time to time belonging to such overseers or other person or persons, to be marked, stamped, or branded with the word "workhouse," and such other mark or marks as they shall think proper for identifying the parish or parishes, township or townships, hamlet or hamlets, place or places by which the same shall have been provided. And if any pawnbroker or other person or persons shall knowingly take in pawn, buy, exchange, or receive any goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things provided for the use of any of the poor who are or shall be received into the workhouse of any parish or parishes, township or townships, hamlet or hamlets, place or places, or to whom the same shall have been given by the overseers of the poor, or other such person or persons as aforesaid appointed as aforesaid, of or for any such parish or parishes, township or townships, hamlet or hamlets, place or places, or any of them, or any of the goods or materials carried into any such workhouse or workhouses to be wrought up, manufactured, or used by the poor there, or any of the goods or furniture of such workhouse or workhouses, or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse or workhouses, or shall be aiding or assisting therein, or if any person or persons shall cause such mark or stamp, marks or stamps, as aforesaid, to be obliterated or defaced, every person so offending shall forfeit for every such offence any sum not exceeding the sum of £5, nor less than £1, upon conviction thereof, either by the confession of such person or persons, or by the oath of one or more credible witness or witnesses, before any one or more of his Majesty's justices of the county, city, town, or riding or division wherein the offence or offences shall be committed, one moiety of which said penalty shall go to the informer or informers, and the other moiety shall go and be paid to the overseers of the poor of the parish or parishes, township or townships, hamlet or hamlets, place or places to which such articles or things may belong, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places; and in case any person or persons who shall be convicted as aforesaid shall not pay such penalty or penalties upon conviction, then and in such case such justice or justices of the peace shall and may, and is and are hereby required to commit such offender or offenders to the common gaol or house of correction, there to remain without bail or mainprize for any space of time not exceeding two calendar months; and if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them any clothes, linen, or other goods or things as aforesaid, such person or per-

sons being thereof lawfully convicted, either by the confession of such party or parties or by the oath or oaths of one or more credible witness or witnesses before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain without bail or mainprize for the space of three calendar months, and in all cases such mark, stamp, or brand on any such articles or things as aforesaid (being duly authenticated) shall be considered and taken to be sufficient evidence, without further proof of the right of property in such overseers or other person or persons appointed as aforesaid, as the case may be; provided always, that such mark or stamp as aforesaid shall not at any time be placed on any articles of wearing apparel so as to be publicly visible on the exterior of the same.

The 7 Geo. 4, c. 16, s. 34, enacts, that if any pensioner of Chelsea Hospital shall unlawfully pawn, or if any pawnbroker shall unlawfully take in pawn, any clothes, linen, stores, or other goods marked with the words "Chelsea Hospital," such mark, if not previously crossed out as directed by the Act, shall be taken as sufficient evidence (without further proof) that the clothes, etc., are the property of the commissioners. And if any pensioner shall unlawfully pawn, or any pawnbroker shall unlawfully take in pawn, any clothes or other goods belonging to the said hospital, he shall forfeit £20, on conviction before a justice of the peace, one moiety to go to the informer, and the other to the use of the hospital.

Penalty on persons pawning, or receiving in pawn, clothes or other articles, marked "Chelsea Hospital," £20.

By the 10 Geo. 4, c. 25, s. 40, if any pensioner or other person or persons shall unlawfully take in pawn, buy, exchange, or receive any clothes, linen, stores, or other goods or articles marked, stamped, or branded as aforesaid, and not previously obliterated or defaced as aforesaid, upon any account or pretence whatever, such mark, stamp, or brand not obliterated or defaced as aforesaid to be considered and taken as sufficient evidence, without further proof, that the clothes, linen, stores, goods, and articles so marked, stamped, or branded, and not obliterated or defaced as aforesaid, are the property of the said commissioners; or if any pensioner, or other person or persons, shall cause such mark or stamp, marks or stamps, to be taken out, obliterated, or defaced from any of the clothes, linen, stores, goods, or articles belonging to the said hospital, or if any pensioner or other person or persons shall knowingly or unlawfully pawn, sell, or dispose of, or if any pawnbroker or other person or persons shall knowingly and unlawfully take in pawn, buy, exchange, or receive any clothes, linen, or other goods or articles belonging to the said hospital, or if any person shall secrete, embezzle, or not duly account for any clothes, linen, or other goods or articles, whether marked or unmarked, belonging to the said hospital or the commissioners thereof, or used therein, such articles having been entrusted or delivered to him or them for any purpose whatsoever, the person or persons so offending shall forfeit for every such offence any sum not exceeding the sum of £20.

By the 6 & 7 Vict. c. 40, s. 2, if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or any tools or apparatus for manufacturing the said materials, shall sell, pawn, purloin, embezzle, secrete, exchange, or otherwise fraudulently dispose of the same materials, tools, or apparatus, or any part thereof, he shall upon being thereof lawfully convicted by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or

Forms.

of any other credible witness or witnesses before two or more justices of the peace, forfeit the full value of the same, and also forfeit such penalty not exceeding £10 together with costs as to the said justices shall seem meet, and every such forfeiture and penalty shall be applied, under the direction of the convicting justices, in manner following (that is to say), In the first place, in making such satisfaction to the party injured as the said justices shall think proper, and the remainder, if any, shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act, and in default of payment of such forfeiture and penalty with costs immediately on conviction, or within such period as the justices so convicting may direct, the said justices may issue their warrant to distrain and sell the goods and chattels of the person so convicted for the amount thereof and costs, and the proceeds of any distress, after paying the penalty forfeiture and costs, and also the costs of such distress, shall be paid over to the person convicted, but if no sufficient distress shall appear, or shall be found whereon to levy the said penalty, forfeiture, and costs, the said justices may either immediately, or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be there imprisoned, with or without hard labour, as to the said justices shall seem meet for any term not exceeding three calendar months unless the amount of such forfeiture and penalty, with costs, or so much thereof as shall not have been paid previously to the commencement of such imprisonment be sooner paid.

Declaration substituted for oaths and affidavits required by Acts as to pawnbrokers.

By the 5 & 6 Will. 4, c. 62, s. 12, where by any Act or Acts at the time in force for regulating the business of pawnbrokers any oath, affirmation, or affidavit might, but for the passing of this Act, be required to be taken or made, the person who by or under such Act or Acts might be required to take or make such oath, affirmation, or affidavit, shall in lieu thereof make and subscribe a declaration to the same effect; and such declaration shall be made and subscribed at the same time, and on the same occasion, and in the presence of the same person or persons, as the oath, affirmation, or affidavit in lieu whereof it shall be made and subscribed would by the Act or Acts directing or requiring the same be directed or required to be taken or made; and all and every the enactments, provisions, and penalties contained in or imposed by any such Act or Acts, as to any oath, affirmation, or affidavit thereby directed or required to be taken or made, shall extend and apply to any declaration in lieu thereof, as well and in the same manner as if the same were herein expressly enacted with reference thereto.

Penalties as to such oaths, etc., to apply to declarations.

See further, *ante*, tit. "Oaths," where see the form of the declaration.

Forms.

(1.) Information against a pawnbroker, on 39 & 40 Geo. 3, c. 99, s. 22, for not exhibiting a table of interest.

— } Be it remembered, that on, etc., A. B., of _____, cometh
to wit. } before me, _____, Esq., one of her Majesty's justices of the
peace in and for the city of _____, [or, in and for the county of _____]
, and acting near the place where the offence hereinafter mentioned was committed, and giveth me, the said justice, to understand and be informed, that C. D., of _____, after the commencement of a certain statute passed in the 40th year of the reign of our lord the late king, George the third, intituled "An Act for better Regulating the Business of Pawnbrokers," within twelve calendar months last past, to wit, on the day of _____, in the year of our Lord _____, aforesaid, and from thence until and at the time of exhibiting this information, did follow and carry on the trade and business of a pawnbroker, at and in a certain shop and place in and parcel of a certain dwelling-house, situate and being in _____,

in [the city of London] aforesaid: nevertheless, the said C. D., not regarding the said statute, did not, nor would, whilst he so followed and carried on the said trade and business as aforesaid, cause to be painted or printed, in large legible characters, the rate of profit allowed by the said statute to be taken by the said C. D., and also the various prices of the note or memorandum to be given by him, according to the rates in and by the said statute allowed, and an account of what notes or memorandums were to be delivered gratis, and of the expense of obtaining a second note or memorandum, where the former one has been lost, mislaid, destroyed, or fraudulently obtained, and place the same in a conspicuous part of the said shop and place, wherein he so carried on the said trade and business as aforesaid, so as to be legible by the persons pledging goods and chattels, standing in the places provided for such persons coming to pawn or redeem goods and chattels at the said shop; but the said C. D., during the time aforesaid, wholly neglected and omitted so to do, contrary to the form of the said statute, whereby, and by force of the said statute, the said C. D. hath forfeited for his said offence a penalty of not less than 40s., nor more than £10, in the discretion of me the said justice: and thereupon the said A. B. prays the judgment of me the said justice, of and upon the premises, and that the said C. D. may be summoned to answer the same, and to make his defence thereto before me.

(Commencement as in form, *supra*, No. 1, to the asterisk) did not, nor would, whilst he so followed and carried on the said trade and business as aforesaid, cause to be painted or written in large legible characters over the door of the said shop and place, by him, during the time aforesaid, made use of for carrying on the said trade and business of a pawnbroker, the Christian and surname of the said C. D., so carrying on the said trade and business as aforesaid, and the word "pawnbroker" following the same, according to the form and effect of the said Act of Parliament: but on the contrary thereof, the said C. D., during the time aforesaid, to wit, on, etc., and from thence for the space of one [week], and upwards, then next following, made use of the said shop and place for carrying on the said trade and business of a pawnbroker, without having such Christian and surname of the said C. D. and the word "pawnbroker" so printed or written as aforesaid, contrary to the form of the said statute, whereby, and by force of the statute, the said C. D. hath forfeited for his said offence the sum of £10; and thereupon, etc. [Conclude as in form, *supra*, No. 1.]

(2.) Information on like Act, s. 23, for not having his name and description over the door.

(Commencement as in form, *supra*, No. 1. State the offence thus:) That after the commencement of a certain statute passed in the 39th and 40th years of the reign of our lord the late king, George the third, intituled "An Act for better regulating the Business of Pawnbrokers," and within twelve calendar months next before the exhibiting of this information, to wit, on the day of _____, in the year of our Lord _____, at the parish of _____, in the said county of _____, one C. D., of the parish aforesaid (then and there being a pawnbroker), did unlawfully receive and take in pledge a certain [cotton frock], of and from one E. F., she the said E. F. then and there being and appearing to be under the age of twelve years, against the form of the said statute; whereby the said C. D., for his said offence, hath forfeited a penalty not less than 40s., nor more than £10 of lawful money of Great Britain, to be applied as the said statute directs; all which the said A. B. is ready to prove before me the said justice, by a credible witness, when the said C. D. shall be summoned to make his defence touching the same; wherefore the said A. B. prays judgment of me the said justice in the premises, and that I will proceed thereupon according to law, and that the said C. D. may be summoned to appear before me, to answer the premises, and to make defence thereto.

(3.) Information on like Act, s. 21, for taking pledges of a child under twelve years of age.

Forms.

(4.) Conviction on 39 & 40 Geo. 3, c. 99, s. 6, of a pawnbroker for taking a pledge without giving a duplicate: where the goods were pawned in an assumed name (a).

Not less than 40s. nor more than £10—s. 26.

Award of one half to informer.—s. 26.

Be it remembered, that on this _____ day of _____, to wit, } in the _____ year of her Majesty's reign, _____, Martha Collins, of the parish of _____, in the county of _____, pawnbroker, is convicted before me, J. M., one of the justices of the peace for the said county of _____, for [that, or on the _____ day of _____ last, in the parish aforesaid, in the county aforesaid, the said M. C., who then and there used the trade and business of a pawnbroker, did then and there take of and from one J. Gillner, in the name of J. Needham, by way of pledge, certain goods and chattels, to wit (etc. etc.), upon which the said M. C. lent and advanced the sum of _____ s., and which said J. Gillner, at the time he pawned the said goods and chattels, informed the said Martha Collins, that his name was John Needham, and that he lived in Leonard Street, and she the said Martha Collins did not, at the time of taking the said pledge, give to the said John Gillner a note or memorandum, fairly and legibly written or printed, or in part written and in part printed, containing therein a description of the said goods so pawned, and also the place of abode of the person by whom such goods were pawned, according to the information given by the said John Gillner to the said Martha Collins, at the time of such pawning as aforesaid, contrary to the form of the statute in such case made and provided]; and I, the said justice, do adjudge the said Martha Collins to pay and forfeit for the same the sum of £ _____, of lawful money of Great Britain; and I do award, that out of the said sum of £ _____, so forfeited as aforesaid, the sum of £ _____, being one moiety of the said sum of £ _____, be paid to J. S., the party complaining in this behalf, and that the sum of £ _____, being the remaining moiety of the said sum of £ _____, so forfeited as aforesaid, be paid and applied as the law directs. Given under my hand and seal, at _____, in the county aforesaid, the day and year first aforesaid.

(5.) The like on s. 2, for taking more than legal interest.

Be it remembered, that on this _____ day of _____, to wit, } in the _____ year of her Majesty's reign, T. T., of the parish of _____, in the county of _____, pawnbroker, is convicted before me, I. N., Esq., one of her Majesty's justices of the peace for the said county of _____, for that, on the _____ day of _____, in the year of our Lord _____, at the parish of _____, in the said county of _____, he the said T. T., who then and there used and exercised the trade and business of a pawnbroker, did unlawfully demand, receive, and take of and from one H. G., on redeeming the pawn and pledge hereinafter mentioned, the sum of [1d.] of lawful money of Great Britain, as, for, and by way of profit upon the sum of [1s. 6d.], of like lawful money, the said sum of [1s. 6d.] being, theretofore, to wit, on the _____ day of _____, in the year of our Lord _____, in the parish and county aforesaid, lent and advanced by the said T. T. to the said H. G. [or "to _____," or "to _____ in the name of _____"], upon a certain pawn and pledge, that is to say [three cotton window curtains and one chair], which said pawn and pledge was redeemed by the said H. G. within the space of seven days after the expiration of the first calendar month after the same had been so pawned and pledged as aforesaid, that is to say, on the said _____ day of _____, in the year aforesaid, to wit, in the parish and county aforesaid, the said sum of [1d.], so demanded, received, and taken as aforesaid, being _____ more than at and after the rate of [½d.] for the loan of any sum not exceeding [2s. 6d.] by the calendar month, including the current month in which the said pawn and pledge was redeemed, and being _____ greater profit than he, the said T. T., was then and there entitled, and ought to demand, receive, and take, contrary to the form of the statute in such case made and provided; and I, the said justice, do adjudge him to pay and forfeit, etc. [as in the foregoing form, No. 4, to the end]. Given under my hand and seal, the day and year first above written.

(a) The 34th section of this Act, ante, 1202, prescribes the formal parts of the conviction.

The above is sufficient to exemplify the form directed to be used by the statute (39 & 40 Geo. 3, c. 99), which only varies according to the particular offence, for which a blank is left, directed to be filled up, by inserting the fact as directed in the information.

(Commence as in form, ante, 1208. State the offence thus :) *That C. D., of* _____ *, on the* _____ *day of* _____ *, in the year* _____ *aforsaid, in the parish of* _____ *, in the said county (he, the said* _____ *C. D., then and there using and exercising the trade and business of a pawnbroker), did unlawfully demand, receive, and take of and from E. F., of* _____ *, who then and there applied and offered to redeem, and did then and there redeem a certain [snuff-box], before then, to wit, on the* _____ *day of* _____ *, in the year aforsaid, in the parish and county aforsaid, pledged by the said E. F. [or by one G. H.] with the said C. D., as and by way of security for a certain sum of money, to wit, the sum of [£4] of lawful money of Great Britain, then and there, to wit, on the day and year last aforsaid, in the parish and county aforsaid, lent and advanced by the said C. D. to the said E. F., and which said pledge did remain in pawn from thence, to wit, from the day and year last aforsaid, until and upon the said* _____ *day of* _____ *, in the year aforsaid, a certain sum of money, to wit, [12s.] of like lawful money, as and by way of profit, over and above the sum of [£4] so lent and advanced as aforsaid, upon and for the loan of the said sum of [£4] for the time during which the said pledge did remain in pawn as aforsaid, the said sum of [12s.] so demanded, received, and taken by the said C. D., being a greater profit than was or is allowed by law to be taken by the said C. D. for the same, contrary to the form of the statute in such case made and provided; whereby and by force of the said statute the said C. D. forfeited for his said offence a penalty of not less than 40s. nor more than £10, in the discretion of me the said justice: and thereupon the said A. B. prays judgment of me the said justice, and that the said C. D. may be summoned to answer the premises, and to make defence thereto, before me.*

(6.) Information for a like offence, but in another form.

(Commence as in form, ante, 1208. State the offence thus :) *That C. D., of* _____ *, after the commencement of a certain statute passed in the 40th year of the reign of our lord the late king, George the third, intituled "An Act for better regulating the Business of Pawnbrokers," to wit, on etc., at etc., he, the said C. D., then and there being a pawnbroker, did take by way of pawn or pledge, of and from E. F., of* _____ *, a certain [shirt], whereon the sum of 5s. was then and there advanced and lent by the said C. D. to the said E. F., nevertheless, the said C. D., not regarding the said Act of Parliament, did not nor would, at the time of taking the said pawn or pledge, give the said E. F. a note or memorandum fairly and legibly written or printed, or in part written and in part printed, containing therein a description of the said [shirt], which he, the said C. D., so received in pawn or pledge, and also the sum of money advanced thereon, with the day of the month and year on which, and the name and place of abode of the said* _____ *, by whom the said [shirt] was so pawned or pledged as aforsaid, and whether the said E. F. was a lodger or housekeeper, according to the form and effect of the said Act of Parliament in that behalf; but, on the contrary thereof, the said A. B. giveth me, the said justice, to understand and be informed, that, although the said C. D., at the time of taking the said pawn or pledge as aforsaid, did give to the said E. F. a certain note or memorandum, as and for such note or memorandum as aforsaid, yet the said [shirt], or the name and place of abode of the said E. F., and whether he was a lodger or housekeeper as aforsaid, were not fairly and legibly written or printed, or in part written and in part printed, in or upon the said note or memorandum so given by the said* _____ *to the said* _____ *as aforsaid, contrary to the form and effect of the said statute; whereby and by force of the said statute, etc. [Conclude as in form, ante, 1208.]*

(7.) Information on 39 & 40 Geo. 3, c. 99, s. 6, against a pawnbroker for not giving a note legibly written, describing the thing pawned.

Forms.

(8.) Information on s. 11 of like Act, for receiving in pawn goods in a state of manufacture, or linen put out to wash.

_____ to wit. Be it remembered, that on _____, A. B., of _____ cometh before me, J. P., Esq., one of his Majesty's justices of the peace in and for the said county of _____, and acting in and near the place where the offence hereinafter mentioned was committed, and [on his oath] giveth me, the said justice, to understand and be informed that C. D., of _____, in the parish of _____ of _____, in the said county, within the space of twelve calendar months now last past, to wit, on etc., in the parish and county aforesaid, then and there using and exercising the trade and business of a pawnbroker, did knowingly take in as a pledge and pawn a certain material, to wit [one case], the property of the said A. B., then and there plainly intended for the composing and manufacturing of certain goods, to wit, a [watch], after the said material had been put into a state and course of manufacture, and before the same was completed and finished for the purpose of wear or consumption, and which material then had been and was intrusted by the said A. B. to one J. W., to manufacture and work up, finish and make up, and upon which said material the said C. D. then and there, upon the said taking in the same as a pledge and pawn as aforesaid, lent the sum of [2s.], contrary to the form of the statute in such case made and provided, whereby and by force of the said statute the said C. D. hath forfeited for his said offence the sum of [4s.], being double the sum so lent on the same as aforesaid, to be paid to the poor of the said parish, and to restore the said material to the said A. B.; and thereupon the said A. B. prays judgment of me the said justice, of and upon the premises, and that the said C. D. may be summoned to answer the same, and to make his defence thereto before me. J. P.

(9.) Information on the like Act, s. 24, for selling pledges before the time limited.

(Commence as in form, ante, 1208. State the offence thus :) That C. D., of _____, on _____, in the parish aforesaid and county aforesaid, then and there using and exercising the trade and business of a pawnbroker, did receive and take from one E. F., in pawn and pledge for the sum of _____, a certain [gown] of the said E. F., of the value of _____; and that the said C. D. afterwards, before the time limited in that behalf by the statute in that case made and provided, and within the space of twelve calendar months ["now last past," or, "next before information given in this behalf,"] to wit, on the _____ day of _____ last past, in the parish and county aforesaid, did cause the said [gown] to be sold; contrary to the form of the statute in that case made and provided. [Conclude as in form, ante, 1208.]

(10.) Information on like Act, s. 14, 15, for not delivering up pledges on payment of principal and interest.

(Commence as in form, ante, 1208. State the offence thus :) That C. D., of _____, on _____, at the parish aforesaid, in the county aforesaid, then and there using and exercising the trade and business of a pawnbroker, did lend and advance unto one E. F., the sum of [5s.] upon a certain [gown] of the said E. F., then and there pledged and pawned by the said E. F. with the said C. D. as such pawnbroker as aforesaid; and that the said C. D. afterwards, and within the space of twelve calendar months ["now last past," or "next before information given in this behalf,"] to wit, on the _____ day of _____ last past, in the parish and county aforesaid, did, without any reasonable cause, neglect and refuse to deliver back to the said E. F. the [gown] so pawned with the said C. D. as aforesaid, although the said E. F. did then and there tender to the said C. D. the sum of [5s.], being the principal sum borrowed thereon as aforesaid, together with the sum of _____, as the profit thereof, according to the rates established by the statute in that case made and provided; and that I, the said J. P., having caused the said C. D. to appear before me, and the said tender being then duly proved before me upon oath, and the said principal sum and profit thereon being again then and there tendered by the said E. F. to the said C. D., and the said C. D. having then and there refused to accept of the same, I, the said J. P., did then and there, by a certain order in that behalf, under my hand, direct that the said [gown] should be forthwith delivered by the said C. D. to the said E. F., and of which said order the said C. D. then and there had notice; and that the said C. D. nevertheless did then and there neglect and refuse, and from thence hitherto hath neglected and refused to deliver up the said [gown] to the said E. F., according to the said order, or to make satisfaction to the said E. F. for the value of the same; contrary to the form of the statute in that case made and provided. [Conclude as in form, ante, 1208.]

Commence as in form, *ante*, 1208. State the offence thus:] *That C. D., of , on , at the parish aforesaid, in the county aforesaid, did knowingly and designedly pawn and pledge with one E. F., then and there being a pawnbroker, a certain [gown], the property of G. H. and of the value of , she, the said C. D., not being then and there employed or authorized by the said G. H. to pawn or pledge the same; contrary to the form of the statute in that case made and provided, [Conclude as in form, ante, 1208.]*

Peers.

(11.) Information on like Act, s. 8, for pawning goods, the property of others.

Peers.

Dukes, earls, and barons are not conservators of the peace at common law; and have no more power as such than mere private persons. (2 *Haw. c. 8, s. 1.*)

Not conservators of the peace.

The safest way of proceeding against a peer for sureties of the peace or good behaviour, is by complaint to the Court of Chancery or Queen's Bench. (1 *Haw. c. 60, s. 5*; *R. v. Earl Ferrers*, 1 *Burr.* 631.)

Sureties of peace against.

A nobleman must be tried by his peers; but this is to be understood only at the suit of the king, upon an indictment for high treason, petit treason, felony, or misprision thereof; but in case of a *præmunire*, riot, or the like, and generally for all misdemeanours and other crimes out of Parliament (unless otherwise specially provided for by statute, as it is in many instances), though it be at the suit of the Queen, he shall not be tried by his peers, but by the freeholders of the county. (3 *Inst.* 30; 2 *Haw. c. 44, s. 12, et seq.*) In the latter case the proceedings are exactly the same as in ordinary cases; in the former the proceedings are also the same to the finding of the indictment inclusive, but they are then removed by *certiorari* to the house of peers, and the trial had there. (*Arch. J. P.* vol. 2, 305.)

Trial of.

In the case of a peer or peeress being indicted, the name and rank are placed in the indictment before the addition of place, as "John Duke of A., late of B., in the county of C."

Description in indictment.

Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken: otherwise he might take advantage of his own contumacy. (3 *Inst.* 31.)

Outlawry of.

A peer produced as a witness ought to be sworn. (*Earl of Shaftesbury v. Lord Digby*, 3 *Keb.* 631.) But this is to be understood of criminal prosecutions, and not civil actions.

Witness.

By the 4 & 5 Vict. c. 22, reciting that "doubts having been entertained whether, notwithstanding the provisions of the 7 & 8 Geo. 4, c. 28, so much of the 1 Edw. 6, c. 12, s. 13, as enacts, "that in all and every case and cases where any of the king's Majesty's subjects shall and may, upon his prayer, have the privilege of clergy as a clerk convict that may make purgation, in all those cases and every of them, and also in all and every case and cases of felony wherein the privilege and benefit of clergy is restrained, excepted, or taken away by this statute or Act (wilful murder and poisoning of malice prepense only excepted), the lord or lords of the Parliament, and peer and peers of the realm having place and voice in Parliament, shall, by virtue of this present Act, of common grace, upon his or their request or prayer alleging that he is a lord or peer of this realm, and claiming the benefit of this Act, though he cannot read, without any burning in the hand, loss of inheritance, or corruption of his

Removal of doubt as to punishment of, in certain cases.

*Penal
Servitude.*

blood, be adjudged, deemed, taken, and used, for the first time only, to all intents, constructions, and purposes, as a clerk convict, and shall be in case of a clerk convict which may make purgation, without any further or other benefit or privilege of clergy to any such lord or peer from thenceforth, at any time, for any cause to be allowed, adjudged, or admitted, any law, statute, usage, custom, or any other thing to the contrary notwithstanding," may not for some purposes still remain in force, —it is enacted, that so much of the last-mentioned Act as is hereinbefore recited shall from henceforth be repealed and utterly void, and no longer of any effect; and that every lord of Parliament or peer of this realm having place and voice in Parliament, against whom any indictment for felony may be found, shall plead to such indictment, and shall upon conviction be liable to the same punishment as any other of her Majesty's subjects are or may be liable upon conviction for such felony, any law or usage to the contrary in anywise notwithstanding.

Penal Servitude.

By the 16 & 17 Vict. c. 99, entitled "An Act to substitute, in certain Cases, other punishment in lieu of Transportation" [20th August, 1853], after reciting that by reason of the difficulty of transporting offenders beyond the seas it has become expedient to substitute, in certain cases, other punishment in lieu of transportation: it is enacted as follows:

Sects. 1 to 4 are repealed by the 20 & 21 Vict. c. 3, *post*, 1216.

Conditional pardons to be allowed with reference to the substituted punishment, as in cases of pardons on condition of transportation.

Sect. 5. Whenever her Majesty, or the lord lieutenant, or other chief governor or governors of Ireland for the time being, shall be pleased to extend mercy to any offender convicted of any offence for which he may be liable to the punishment of death, upon condition of his being kept to penal servitude for any term of years or for life, such intention of mercy shall have the same effect and may be signified in the same manner, and all Courts, justices, and others shall give effect thereto and to the condition of the pardon in like manner, as in the cases where her Majesty or the lord lieutenant or other chief governor or governors of Ireland for the time, is or are now pleased to extend mercy upon condition of transportation beyond seas, the order for the execution of such punishment as her Majesty, or the lord lieutenant or other chief governor or governors of Ireland for the time being, may have made the condition of her, his, or their mercy being substituted for the order for transportation.

Persons under sentence or order of penal servitude how to be dealt with.

Sect. 6. Every person who under this Act shall be sentenced or ordered to be kept in penal servitude may, during the term of the sentence or order, be confined in any such prison or place of confinement in any part of the United Kingdom, or in any river, port, or harbour of the United Kingdom, in which persons under sentence or order of transportation may now by law be confined, or in any other prison in the United Kingdom, or in any part of her Majesty's dominions beyond the seas, or in any port or harbour thereof, as one of her Majesty's principal secretaries of state may from time to time direct; and such person may during such term be kept to hard labour and otherwise dealt with in all respects as persons sentenced to transportation may now by law be dealt with while so confined.

All Acts, etc., concerning convicts sentenced to transportation

Sect. 7. All Acts and provisions of Acts now applicable with respect to persons under sentence or order of transportation shall, so far as may be consistent with the express provisions of this Act, be construed to

extend and be applicable to persons under any sentence or order of penal servitude under this Act; and all the powers and provisions contained in the Act of the fifth year of king George the fourth, chapter eighty-four, authorizing the appointment by her Majesty from time to time of places of confinement as therein mentioned for male offenders under sentence or order of transportation, and authorizing her Majesty to order male offenders convicted in Great Britain and under sentence or order of transportation, to be kept to hard labour in any part of her Majesty's dominions out of England, shall extend and be applicable to and for the appointment by her Majesty of like places of confinement in any part of the United Kingdom for offenders (whether male or female) sentenced under this Act in any part of the United Kingdom, and to and for the ordering of such offenders to be kept to hard labour in any part of her Majesty's dominions out of England; and all the provisions of the said Act concerning the removal to or from and confinement in the places of confinement in or out of England, appointed under the said Act, of the offenders therein mentioned, and all Acts and provisions of Acts now in force concerning or relating to the regulation and government of such places of confinement, and the custody, treatment, management, and control of or otherwise in relation to the offenders confined therein, shall, so far as the same may be consistent with the express provisions of the Act, extend and be applicable to and for the removal to and from and confinement in the places of confinement appointed under this Act of the offenders sentenced in any part of the United Kingdom, and otherwise be applicable to and in respect of such places of confinement and the offenders to be confined therein.

Sect. 8. Powers of secretary of state to be exercised in Ireland by Lord Lieutenant.

Sect. 9. It shall be lawful for her Majesty, by an order in writing under the hand and seal of one of her Majesty's principal secretaries of state, to grant to any convict now under sentence of transportation, or who may hereafter be sentenced to transportation, or to any punishment substituted for transportation by this Act, a licence to be at large in the United Kingdom and the Channel Islands, or in such part thereof respectively as in such licence shall be expressed, during such portion of his or her term of transportation or imprisonment, and upon such conditions in all respects as to her Majesty shall seem fit; and it shall be lawful for her Majesty to revoke or alter such licence by a like order at her Majesty's pleasure.

Sect. 10. So long as such licence shall continue in force and unrevoked, such convict shall not be liable to be imprisoned or transported by reason of his or her sentence, but shall be allowed to go and remain at large according to the term of such licence.

Sect. 11. Provided always, that if it shall please her Majesty to revoke any such licence as aforesaid, it shall be lawful for one of her Majesty's principal secretaries of state, by warrant under his hand and seal, to signify to any one of the police magistrates of the metropolis that such licence has been revoked, and to require such magistrate to issue his warrant under his hand and seal for the apprehension of the convict to whom such licence was granted, and such magistrate shall issue his warrant accordingly, and such warrant shall and may be executed by the constable to whom the same shall be delivered for that purpose in any part of the United Kingdom, or in the isles of Jersey, Guernsey, Alderney, or Sark, and shall have the same force and effect in all the said places as if the same had been originally issued or subsequently endorsed by a justice of the peace or magistrate, or other lawful authority having jurisdiction in the place where the same shall be executed; and such

*Penal
Servitude.*

made applicable
for the purposes
of this Act.

Her Majesty
may grant li-
cences to be at
large to convicts
under sentence of
transportation.

Holder of licence
not to be im-
prisoned, etc.,
by reason of his
sentence.

If licence re-
voked, the con-
vict may be ap-
prehended, and
committed to
prison.

*Penal
Servitude.*

convict when apprehended under such warrant shall be brought, as soon as he conveniently may be, before the magistrate by whom the said warrant shall have been issued, or some other magistrate of the same Court, and such magistrate shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the prison or place of confinement from which he was released by virtue of the said licence, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his or her original sentence, and shall undergo the residue thereof as if no such licence had been granted (*a*).

Persons convicted of larceny after previous conviction for felony not to be transported.

Sect. 12. No person shall, after the commencement of this Act, be liable to be transported by reason only of a conviction for larceny after a previous conviction for felony, but every such person so convicted may be punished by penal servitude for any term not less than four years and not more than ten years.

Queen's prerogative.

Sect. 13. Provided always, that nothing in this Act contained shall in any manner affect her Majesty's royal prerogative of mercy, or any prerogative of mercy vested in the lord lieutenant or other chief governor or governors of Ireland for the time being.

Discretion of Courts as to alternative punishments not to be affected.

Sect. 14. Provided also, that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation, but where such other punishment may be awarded at the discretion of the Court, instead of transportation, or in addition thereto, the same may be awarded instead of or (as the case may be) in addition to the punishment substituted for transportation under this Act.

Transportation to include banishment.

Sect. 15. For the purposes of this Act, the term "transportation" shall include banishment beyond the seas.

By the 20 & 21 Vict. c. 3, entitled, "An Act to amend the Act of the Sixteenth and Seventeenth years of her Majesty, to substitute in certain Cases other Punishment in lieu of Transportation" [26th June, 1857].

Sections 1, 2, 3, and 4, of recited Act repealed.

Sect. 1. Sections 1, 2, 3, and 4 of the said Act (*b*) shall be repealed.

Sentence of transportation abolished, and sentence of penal servitude substituted.

Sect. 2. After the commencement of this Act, no person shall be sentenced to transportation: and any person who, if this Act and the said Act (*b*) had not been passed, might have been sentenced to transportation, shall, after the commencement of this Act, be liable to be sentenced to be kept in penal servitude for a term of the same duration as the term of transportation to which such person would have been liable if the said Act (*b*) and this Act had not been passed; and in every case where, at the discretion of the Court, one of any two or more terms of transportation might have been awarded, the Court shall have the like discretion to award one of any two or more of the terms of penal servitude which are hereby authorized to be awarded instead of such terms of transportation: Provided always, that any person who might at the discretion of the Court have been sentenced either to transportation for any term or to any period of imprisonment, shall be liable at the discretion of the Court to be sentenced either to penal servitude for the same term or to the same period of imprisonment; and in any case in which before the passing of the said Act (*b*) sentence of seven years' transportation might have been passed, it shall be lawful for the Court in its discretion to pass a sentence of penal servitude of not less than three years (*c*).

(*a*) See the 20 & 21 Vict. c. 3, *infra*.

(*b*) 16 & 17 Vict. c. 99.

(*c*) Five years. See the 27 & 28 Vict. c. 47, s. 2, *post*, 1217.

Sect. 3. And whereas the provisions applicable to persons under sentence of transportation extend to persons under sentence of penal servitude conveyed to parts beyond the seas in those cases only where they are conveyed to and kept in places of confinement appointed under the said Act (a) or the 5 Geo. 4, c. 84, and it is expedient to extend the said provisions to other cases :

Penal Servitude.

Provisions of Acts concerning transported offenders to apply to offenders under sentence of penal servitude.

Any person now or hereafter under sentence or order of penal servitude may, during the term of the sentence or order, be conveyed to any place or places beyond the seas to which offenders under sentence or order of transportation may be conveyed, or to any place or places beyond the seas which may be hereafter appointed as herein mentioned ; and all Acts and provisions now applicable to and for the removal and transportation of offenders under sentence or order of transportation to and from any places beyond the seas, and concerning their custody, management, and control, and the property in their services, and the punishment of such offenders if at large without lawful cause before the expiration of their sentence, and all other provisions now applicable to and in the case of persons under sentence or order of transportation, shall apply to and in the case of persons under sentence or order of penal servitude, as if they were persons under sentence or order of transportation.

Sect. 4. The provisions and powers of the 5 Geo. 4, c. 84, authorizing the appointment (by her Majesty, with the advice of her privy council) of any place or places beyond the seas to which felons and other offenders under sentence or order of transportation shall be conveyed, and all other powers of her Majesty, or the lord lieutenant or chief governor or governors of Ireland, for the like purpose, shall extend and be applicable to and for the appointment of any place or places beyond the seas to which offenders under sentence or order of penal servitude may be conveyed, as herein provided.

Existing power to appoint places of transportation to be applicable for the purposes of this Act.

Sect. 5. And whereas by the said Act of the sixteenth and seventeenth years of her Majesty it is provided, that any convict whose licence is revoked shall be recommitted to the prison or place of confinement from which he was released by virtue of the said licence : be it enacted, that from and after the passing of this Act any such convict may be recommitted by the magistrate issuing his warrant in that behalf, either to the prison from which he was released by virtue of his licence, or to any other prison in which convicts under sentence of penal servitude may be lawfully confined.

Magistrates may recommit convicts whose licences are revoked to penal servitude in any convict prison.

Sect. 6. Where in any enactment now in force the expression "any crime punishable with transportation," or "any crime punishable by law with transportation," or any expression of the like import, is used, the enactment shall be construed and take effect as applicable also to any crime punishable with penal servitude.

All enactments referring to transportation to have reference to penal servitude.

Sect. 7. The said Act of the sixteenth and seventeenth years of her Majesty and this Act shall be read and construed together as one Act.

Recited Act and this to be read as one.

By the 27 & 28 Vict. c. 47, entitled, "An Act to amend the Penal Servitude Acts" [25th July, 1864], it is enacted as follows :—

Sect. 1. This Act shall be construed as one with the above-mentioned Acts, and the said Acts, together with this Act, may be cited for all purposes as the Penal Servitude Acts, 1853, 1857, and 1864, and each of the said Acts may be cited as the Penal Servitude Act of the year in which it was passed.

Short titles.

Sentences of Penal Servitude.

Sect. 2. No person shall be sentenced to penal servitude in respect to

Length of sen-

(a) See note (b) *ante*, 1216.

*Penal
Servitude.*

tences of penal
servitude.

any offence committed after the passing of this Act for a period of less than five years, and where under any Act now in force a period of less than five years is the utmost sentence of penal servitude that can be awarded, a period of five years shall, in respect to any offence committed after the passing of this Act, in such Act be substituted for the less period; and where under any Act now in force a period of either less or more than five years may be awarded as a sentence of penal servitude, the least sentence of penal servitude that can be awarded under that Act shall, in respect to any offence committed after the passing of this Act, be a period of five years; and where any person shall on indictment be convicted of any crime or offence punishable with penal servitude, after having been previously convicted of felony, or, in Scotland, of any crime (whether such previous conviction shall have taken place upon an indictment or under the provisions of the Act passed in the eighteenth and nineteenth of Victoria, chapter one hundred and twenty-six), the least sentence of penal servitude that can be awarded in such case shall be a period of seven years.

Convict Prisons.

Punishment of
offences in con-
vict prisons.

Sect. 3. One of her Majesty's principal secretaries of state in Great Britain, and the lord lieutenant or other chief governor in Ireland, may, by warrant under his hand and seal, empower any two or more justices of the peace, to be named in such warrant, acting for any county in which, a prison for the reception of convicts under sentence of penal servitude is situate, to order, from time to time, the infliction of corporal punishment on any convict confined in such prison, for an offence committed by such convict in such prison, and against the discipline thereof; and any two or more justices of the peace thus empowered shall have the same power of adjudicating on such offences, and of ordering the infliction of such punishment, to be exercised under the same conditions as one of the directors of convict prisons would have, and no greater.

Licences.

Forfeiture of
licence.

Sect. 4. A licence granted under the said Penal Servitude Acts, or any of them, may be in the form set forth in schedule (A.) to this Act annexed, and may be written, printed, or lithographed. If any holder of a licence granted in the form set forth in the said schedule (A.) is convicted, either by the verdict of a jury, or upon his own confession, of any offence for which he is indicted, his licence shall be forthwith forfeited by virtue of such conviction; or if any holder of a licence granted under the said Penal Servitude Acts, or any of them, who shall be at large in the United Kingdom, shall, unless prevented by illness or other unavoidable cause, fail to report himself personally, if in Great Britain to the chief police station of the borough or police division, and if in Ireland to the constabulary station of the locality, to which he may go within three days after his arrival therein, and being a male subsequently once in each month, at such time and place, in such manner, and to such person as the chief officer of the constabulary force to which such station belongs shall appoint, or shall change his residence from one police district to another without having previously notified the same to the police or constabulary station to which he last reported himself, he shall be deemed guilty of a misdemeanour, and may be summarily convicted thereof, and his licence shall be forthwith forfeited by virtue of such conviction, but he shall not be liable to any other punishment by virtue of such conviction.

Offences by
holders of a
licence.

Sect. 5. If any holder of a licence granted in the form set forth the said schedule (A.),—

1. Fails to produce his licence when required to do so by any judge, justice of the peace, sheriff, sheriff substitute, police or other magistrate before whom he may be brought charged with any offence, or

by any constable or officer of the police in whose custody he may be, and also fails to make any reasonable excuse why he does not produce the same; or

2. Breaks any of the other conditions of his licence by an act that is not of itself punishable either upon indictment or upon summary conviction;

he shall be deemed guilty of an offence punishable summarily by imprisonment for any period not exceeding three months, with or without hard labour.

Sect. 6. Any constable or police officer may, without warrant, take into custody any holder of such a licence whom he may reasonably suspect of having committed any offence, or having broken any of the conditions of his licence, and may detain him in custody until he can be taken before a justice of the peace or other competent magistrate, and dealt with according to law.

Apprehension of holder of licence without warrant.

Sect. 7. In England and Ireland any offence under this Act punishable summarily may be prosecuted summarily before two or more justices; as to England, in manner directed by the 11 & 12 Vict. c. 43, or any Act amending the same.

Summary punishment of offences.

Sect. 8. Where any holder of a licence granted in the form set forth in the said schedule (A.) is convicted of an offence punishable summarily under this or any other Act, the justices, sheriff, sheriff substitute, or other magistrate convicting the prisoner, shall without delay forward by post a certificate in the form given in schedule (B.) to this Act annexed, if in England or Scotland to one of her Majesty's principal secretaries of state, if in Ireland to the lord lieutenant or other chief governor of Ireland, and thereupon the licence of the said holder may be revoked in manner provided by the said Penal Servitude Acts.

Where holder of licence is summarily convicted, convicting magistrate to forward certificate to secretary of state or lord lieutenant of Ireland.

Sect. 9. Where any licence granted in the form set forth in the said schedule (A.) is forfeited by a conviction of any indictable offence, or is revoked in pursuance of a summary conviction under this Act or any other Act of Parliament, the person whose licence is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for the offence in consequence of which his licence is forfeited or revoked, further undergo a term of penal servitude equal to the portion of his term of penal servitude that remained unexpired at the time of his licence being granted, and shall, for the purpose of his undergoing such last-mentioned punishment, be removed from the prison of any county, borough, or place in which he may be confined, to any prison in which convicts under sentence of penal servitude may lawfully be confined, by warrant under the hand and seal of any justice of the peace of the said county, borough, or place, and shall be liable to be there dealt with in all respects as if such term of penal servitude had formed part of his original sentence.

Effect of forfeiture or revocation of licence.

Sect. 10. Provided always, that it shall be lawful for her Majesty, or for the lord lieutenant or other chief governor in Ireland, whenever they shall respectively think fit, to grant from time to time to convicts under sentence of penal servitude, licences in any other form different from that set forth in schedule (A.), which they may respectively consider it expedient to adopt, and containing other and different conditions: and such last-mentioned licences shall be revocable at pleasure by the authority by which they are granted; but no holder of such last-mentioned licence shall be deemed guilty of an offence punishable upon summary conviction merely by reason of the breach of the conditions of the said last-mentioned licences, or any of them.

Licences may be granted in form differing from that in schedule (A.).

Penal Servitude.**SCHEDULES.****SCHEDULE (A.).**

Order of Licence to a Convict made under the Statute.

Whitehall,

day of 18 .

Her Majesty is graciously pleased to grant to , who was convicted of at the for the on the , and was then and there sentenced to be kept in penal servitude for the term of , and is now confined in the her royal licence to be at large from the day of his liberation under this order during the remaining portion of his said term of penal servitude, unless the said shall before the expiration of the said term be convicted of some indictable offence within the United Kingdom, in which case such licence will be immediately forfeited by law, or unless it shall please her Majesty sooner to revoke or alter such licence.

This licence is given subject to the conditions endorsed upon the same, upon the breach of any of which it will be liable to be revoked, whether such breach is followed by a conviction or not.

And her Majesty hereby orders that the said be set at liberty within thirty days from the date of this order.

Given under my hand and seal

CONDITIONS.

1. *The holder shall preserve his licence and produce it when called upon to do so by a magistrate or police officer.*
2. *He shall abstain from any violation of the law.*
3. *He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.*
4. *He shall not lead an idle and dissolute life, without visible means of obtaining an honest livelihood.*

If his licence is forfeited or revoked in consequence of a conviction for any offence, he will be liable to undergo a term of penal servitude equal to the portion of his term of years which remained unexpired when his licence was granted, viz. the term of years.

SCHEDULE (B.).

Form of Certificate of Conviction of Holder of Licence.

I do hereby certify that A. B., the holder of a licence under the Penal Servitude Acts, was on the day of , in the year , duly convicted by of the offence of and sentenced to .

*C. D.,
Clerk to the said justices.*

Perjury, and Subornation of.

I. *Perjury at Common Law*, p. 1221.

1. *What constitutes the Offence*, p. 1221.
2. *The Indictment for*, p. 1227.
3. *The Evidence*, p. 1238.
4. *Prosecution for, by Direction of Judge—Certiorari—Quashing, etc., Indictment—Trial—Former Acquittal, etc.*, p. 1243.
5. *Punishment for, and Consequences of Offence*, p. 1245.

II. *Subornation of Perjury at Common Law*, p. 1246.

III. *Perjury, and Subornation of, by the 5 Eliz. c. 9*, p. 1246.

IV. *Perjury by particular Statutes*, p. 1250.

V. *Power of Justices, etc., in*, p. 1251.

VI. *Forms*, p. 1252.

I. *Perjury by the Common Law.*

And herein, 1st, Of the Offence itself; 2ndly, The Indictment for it; 3rdly, The Evidence; 4thly, The Prosecution for, by direction of a Judge, *Certiorari*, Quashing, etc., the Indictment, Trial, and Former Acquittal; and 5thly, The Punishment and its Consequences.

1. WHAT CONSTITUTES THE OFFENCE.

Perjury by the common law seemeth to be a wilful false oath, by one who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a manner material to the point in question, whether he be believed or not. (1 *Hawk.* c. 69, s. 1; 3 *Inst.* 164. See also *per* Lord Mansfield, C.J., in *R. v. Aylett*, 1 *T. R.* 69.)

Perjury at common law.

Wilful.—The false oath must be wilful, and proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprise or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatsoever the most infamous and detestable. (1 *Hawk.* c. 69, s. 2; *Com. Dig.* "*Just. of Peace*," (B).)

Must be wilful.

False.—It is said not to be material, whether the fact which is sworn to be in itself true or false; for however the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false; inasmuch as he wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears to proceed upon the credit of a depo-

Must be false; or if true, not so within defendant's knowledge.

1. *Perjury
by the
Common
Law.*

Swearing to be-
lief.

sition which any stranger might make as well as he. (1 *Hawk. c. 69*, s. 6.) But it is otherwise on the 5 *Eliz. c. 9, post*, 1249. So, in *Pedley's case*, 1 *Leach*, 327, it was holden by Lord *Mansfield*, C.J., that a man may be indicted for perjury in swearing that he *believes* a fact to be true which he must know to be false. It is further said, that upon this question being agitated in the Court of Common Pleas, all the judges were unanimous, that belief was to be considered as an absolute term, and that an indictment might be supported upon such a statement. (1 *Hawk. c. 69*, s. 7.)

If a man falsely swears that he thinks a fact to be true, though the falsehood might be difficult of proof, still it would be perjury, if proved. (*Reg. v. Schlesinger*, 10 *Q. B.* 670.)

But it is said that if a witness swears positively to a fact which he does not absolutely know, but which he has some grounds for believing has happened at the time he swears it, and which afterwards proves to be true,—as if he has instructed an agent or correspondent to do a certain thing at such a period at a distant place, and he swears positively that the thing was done, though he could not at the time by any possibility have received information whether the thing was done or not; this, although certainly a very rash and in strictness of law a *false* oath, yet in the absence of all *wicked intention to deceive*, and the fact really turning out as the witness had previously sworn, he could not, it is apprehended in this instance, be liable to the penalties of perjury, which must not only be *wilful* but must also be *corrupt*. (2 *Deacon, Crim. Dig.* 1000.)

Must be on oath.
False affirma-
tions of Quakers,
Moravians, and
Separatists.

Oath.]—The false affirmation or declaration of any of the people called Quakers or Moravians, made instead of an oath, subjects the party to the penalties of perjury, by the 3 & 4 *Will. 4*, c. 49, s. 1. So as to the false affirmation of persons who were formerly Quakers or Moravians, by 1 & 2 *Vict. c. 77*; and so as to the false affirmation of persons belonging to the sect called Separatists, by 3 & 4 *Will. 4*, c. 82, ss. 1, 2; and see the 5 & 6 *Will. 4*, c. 62, *ante*, tit. "*Oaths*," as to false declarations in lieu of oaths.

All persons to be
bound by the
oath adminis-
tered in the
form, etc., which
such persons
may declare
binding.

With respect to the form of the oath on which perjury may be assigned, the recent statute of 1 & 2 *Vict. c. 105*, entitled "An Act to Remove Doubts as to the Validity of certain Oaths" [14th Aug., 1838], declares and enacts, that in all cases in which an oath may lawfully be and shall have been administered to any person, either as a jurymen or a witness, or a deponent in any proceeding, civil or criminal, in any Court of law or equity in the United Kingdom, or on appointment to any office or employment, or on any occasion whatever, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding; and every such person, in case of wilful false swearing, may be convicted of the crime of perjury in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted.

By the 17 & 18 *Vict. c. 125*, s. 20, if any person called as a witness or required or desiring to make an affidavit or deposition shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge or other presiding officer or person qualified to take affidavits or depositions upon being satisfied of the sincerity of such objection to permit such person instead of being sworn to make his or her solemn affirmation or declaration in the words following, viz. :—

I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of an oath is according to my religious belief unlawful; and I do solemnly, sincerely, and truly affirm and declare, etc., [which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form].

And by sect. 21, if any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing, which, if the same had been sworn in the usual form would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

By the 24 & 25 Vict. c. 66, s. 1, if any person called as a witness in any Court of criminal jurisdiction in England or Ireland, or required or desiring to make an affidavit or deposition in the course of any criminal proceeding, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person instead of being sworn to make his or her solemn affirmation or declaration in the words following, viz. :—

I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of an oath is according to my religious belief unlawful, and I do solemnly, sincerely, and truly affirm and declare, etc. [which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form].

By sect. 2, if any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing which if the same had been sworn in the usual form would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

This is extended to jurors by the 30 & 31 Vict. c. 35, s. 8.

See also perjury under particular statutes, *post*, 1250.

By one.—The crime of perjury being in its nature a distinct and separate offence, several persons cannot be joined in one indictment. (*R. v. Phillips*, 2 *Stra.* 921.) But two or more may be indicted for subornation of perjury. (*R. v. Rhodes*, 2 *Lord Raym.* 886.)

Two cannot be indicted for, in one indictment.

Where one defendant was indicted for perjury and the other for subornation, no objection was taken to both being included in the same indictment. (*Reg. v. Goodfellow*, C. & M. 569; *Russ. on Cr. Vol. III.* p. 40, n. (u), 4th ed.)

Being lawfully required.—It seemeth clear, that no oaths whatsoever, taken before persons acting merely in a private capacity, or before those who take upon them to administer oaths of a public nature without legal authority, or before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them, or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, can amount to perjuries, but are altogether idle and of no force. (1 *Hawk. c.* 69, s. 4; *R. v. Dunn*, 1 *D. & R.* 10. See also 4 *Bl. Com.* 137; and *ante*, “Oaths.”)

Must be legally sworn.

It seems a false oath taken before commissioners after the death of the King, though their commission is in strictness determined by such demise, will nevertheless amount to perjury if the commissioners had no notice of the demise when the oath was administered. (1 *Hawk. c.* 69, s. 4.)

In any Judicial Proceeding.—For though an oath be given by him that hath lawful authority, and the same broken, yet if it be not in a judicial proceeding, it is not perjury, because such oaths are general and

Must be in a judicial proceeding.

1. *Perjury
by the
Common
Law.*

extra-judicial, but it serves for aggravation of the offence. Such are, general oaths given to officers or ministers of justice, the oath of fealty and allegiance, and such like. Thus, if an officer commit extortion, it is against his general oath, but yet not perjury, because not in a judicial proceeding: but when he is charged with extortion, the breach of his oath may serve for aggravation. (3 *Inst.* 166; *R. v. Aylett*, 1 *T. R.* 69.)

But it seems that perjury may be assigned upon the oath against simony taken by clergymen at the time of their institution. (*R. v. Lewis*, 1 *Str.* 70.)

Where an oath is administered by a person that hath lawful authority to tender the same, and it is afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable by the common law. (3 *Inst.* 166; 4 *Bl. Com.* 137. See *R. v. Cohen*, 1 *Stark.* 511; *R. v. White*, *M. & M.* 271; 2 *Chit.* 2 *C. L.* 303.) And whenever the proceedings are *coram non judice*, however false the oath may be, the party taking it cannot be indicted for perjury, as if a party take a false oath in a Court of Requests, in a matter concerning lands, he would not be liable to an indictment, that Court having no jurisdiction over questions concerning lands. (3 *Salk.* 269.) Commissioners acting under a fiat of bankruptcy adjudicated A. to be a bankrupt, and afterwards B. was examined before them touching the estate of A., and gave evidence which was alleged to be false; B. being indicted for perjury, it appeared on the trial that the petitioning creditor's debt on which the fiat had issued was not of sufficient amount; but it also appeared that A. owed other debts which might have been substituted for the petitioning creditor's debt by order of the Lord Chancellor, under s. 18 of Geo. 4, c. 16, so as to have rendered the fiat valid, but that no such order had been made:—Held, that under these circumstances B. could not be guilty of perjury on this his examination. (*Reg. v. Ewington*, 1 *Car. & Marsh.* 319.) But, *semble*, that if B. had been examined by the commissioners on the preliminary proceedings before them, to ascertain whether A. should be adjudged a bankrupt or not, B. might have been guilty of perjury, even though there had been no good petitioning creditor's debt. (*Ibid.*) In *Reg. v. Proud*, where an apprentice had given false evidence upon the hearing of a complaint before justices, in which he claimed wages, although the term of apprenticeship had expired, *Kelly*, C.B., in giving the judgment of the Court, said: "I am clear that the justice had jurisdiction to enter upon the inquiry and upon the case, and he must have proceeded on the complaint before he could tell whether he had jurisdiction or not. In the course of that inquiry he had to hear evidence on oath, and his determination upon the question of his jurisdiction might depend upon the truth or falsehood of that evidence, therefore false material evidence given upon such inquiry would be perjury. (*Reg. v. Proud*, 36 *L. J.*, *M. C.* 62; *L. R.*, 1 *C. C. R.* 71.)

It seems to be clearly agreed that all false oaths taken before those who are in any way intrusted with the administration of public justice, in relation to any matter legally pending before them, are properly *perjuries*. And it seems, therefore, that all persons are indictable who wilfully forswear themselves in any *judicial proceeding* depending before a Court of law or equity, the spiritual Court, or any other Court, whether the proceedings therein be of record or not, or whether they concern the interest of the king or the subject. And it is not material whether the false oath be taken in the face of the Court, or before persons authorized by it to examine a matter, the knowledge whereof is necessary for the right determination of a cause, or whether such matter relates to the merits of the cause, or is merely collateral thereto. Thus, a false oath taken before a sheriff upon a writ of inquiry of damages, or before a commissioner appointed to take cognizance of bail, where a person offering himself to be bail for another swears that his substance is greater than it is, is punishable the same as if the oath was taken before the Court itself on the trial of the cause. (1 *Hawk.* c. 69, s. 3.)

Swearing falsely before a magistrate, to induce him to compel another to find sureties for the peace is perjury. (1 *Hawk.* c. 69, s. 3; 1 *Camp.* 404.) And by the 5 & 6 Will. 4, c. 62, s. 21, a party wilfully and corruptly making before a magistrate a false declaration authorized to be made in lieu of an oath, will be guilty of a misdemeanour. (See *ante*, tit. "Oaths.") But to sustain an indictment for perjury on an oath taken before a magistrate, it must appear on the face of it that it was in a matter over which he had jurisdiction. (See the cases, *post*, 1231. And see 5 & 6 Will. 4, c. 62, s. 13, tit. "Oaths.")

Swearing falsely to a material fact in an affidavit to procure the re-admission of an attorney is perjury. (See *ex parte Wentworth*, 2 Dowl. 607.)

So is false swearing in the insolvent Court (*R. v. Hoops*, 6 Ad. & Ell. 198) as soon as the filing of the insolvent's petition is proved, which gives jurisdiction to the Court; and notice of the petition and of adjournment of the Court may be rejected. (*Reg. v. Westley, Bell, C. C.* 193.)

So is false swearing before a marine local board constituted under the 17 & 18 Vict. c. 104 upon a material matter then being lawfully investigated under the 25 & 26 Vict. c. 63, s. 23. (*Reg. v. Tomlinson*, 36 L. J., M. C. 41; L. R. 1 C. C. R. 49.)

So perjury was committed in the oath against simony. (*R. v. Lewis*, 1 *Strange*, 70.)

The taking a false oath before a surrogate to procure a marriage licence has been held not to amount to perjury. (*R. v. Foster, R. & R.* 459; and see *R. v. Alexander*, 1 *Leach*, 63; *R. v. Woodman*, *Id.* 64.) But the correctness of this is questioned by Mr. Deacon in his 'Digest,' p. 1001. It should seem, however, that if the indictment had stated that the defendant took the oath to procure the licence, or that a marriage had been had under such a licence so procured, the party might have been punished for a misdemeanour. (*Id.*) And see *R. v. Foster, R. & R.* 459, and *Reg. v. Chapman*, 1 Den. C. C. 432. And now, by the 6 & 7 Will. 4, c. 85, s. 38, 3 & 4 Vict. c. 72, s. 4, and 19 & 20 Vict. c. 119, ss. 2, 18, a false oath or declaration made for this purpose will amount to perjury. (See *ante*, tit. "Marriage," 868, 874.)

A party may be indicted for perjury though he have not complied with the rules and orders of a Court which are merely directory; and, therefore, where a party swore falsely in an affidavit which could not, from certain omissions in the jurat, be received in the Court in which it was sworn, it was held he was indictable, the perjury being complete at the time of swearing. (*R. v. Hailey, R. & M. C. N. P.* 94; 1 C. & P. 258; 1 S. C.)

A master extraordinary in Chancery has no authority to administer an oath in matters in the Admiralty Court, and an indictment for perjury would be bad upon such false oath; but the party taking it with a view to its being received in the Admiralty Court would be guilty of a misdemeanour. (*Reg. v. Stone, Dears. C. C.* 251.)

Swears absolutely.—For the deposition must be direct and absolute; and not as he thinketh, or remembereth, or believeth, or the like. (3 *Inst.* 166.) Unless, indeed, he must know what he so swears to is false. (See *Pedley's case*, 1 *Leach*, 325; *sed vide* 1 *Hawk.* c. 69, s. 7, *ante*, 1222; and see *Reg. v. Schlesinger, ante*, 1222.)

Swearing absolutely.

The false swearing as to the legal operation of a deed is not indictable. (*R. v. Crespigny*, 1 *Esp. Rep.* 280.)

Swearing as to legal operation of an instrument.

In a Matter material to the Point in Issue.—For, if it be not material, then, though it be false, yet it is no perjury, because it concerneth not the point in issue, and therefore, in effect it is extra-judicial. (3 *Inst.* 167; *R. v. M'Keron*, 2 *Russ.* 541; *R. v. Nicholl the Younger*, 1 B. & Ald. 21.) Thus swearing, if a witness be asked whether goods were

Must be material to the point in issue.

1. *Perjury
by the
Common
Law.*

paid for on a particular day, and he answer in the affirmative,—if the goods were really paid for, though not on that particular day, it will not be perjury (2 *Ro. Rep.* 41, 42), unless the day be material. (And see 1 *Hawk. c.* 69, s. 8.)

It has been doubted lately whether any false swearing in a judicial proceeding with intent to mislead does not amount to perjury. (*Per Erle, C.J., Reg. v. Mullaney, L. & C.* 593.)

But it is not necessary that it appear to what degree the point in which a man is perjured was material to the issue; for if it be but circumstantially material, it will be perjury. (*R. v. Grieve, 1 Ld. Raym.* 256.)

Though the statement made by a witness be not directly material to the issue, yet if it be made in answer to a question put to him, on cross-examination, with a view to try his credit, and the witness deposes to any fact which is positively false, it seems that he will not be less liable to an indictment for perjury than if he had sworn to a matter directly material, for a witness may state many things which are circumstantially, though not directly, material to the issue. (2 *Deacon, C. D.* 1003, and cases there collected.)

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for, in the nature of the thing, evidence may be very material, and yet it may not be full enough to prove directly the point in question. (*Reg. v. Rhodes, 2 Ld. Raym.* 889; *R. v. Pepsys, Peake N. P.* 138.)

Whatever affects the credit of a witness on cross-examination is material. (*Reg. v. Overton, C. & M.* 655, 2 *M. C. C. R.* 263.)

A material question may be raised upon a matter collateral to the ultimate question to be decided. (*Reg. v. Atlass, 1 Cox C. C.*; *Reg. v. Scotton, 5 Q. B.* 493; *Reg. v. Bennett, 2 Den. C. C.* 240; *Reg. v. Mullaney, L. & C.* 593.)

False evidence with a view to the admission in evidence of a material document will render the party liable to an indictment for perjury, although such document was never admitted. (*R. v. Phillpots, 2 Den. C. C.* 302; 2 *C. & K.* 135.)

Swearing to the reading over of a bond before execution was held material to the question of fraud or no fraud. (*Reg. v. Smith, 1 F. & F.* 98.)

Evidence of the destruction of some accounts was held immaterial on a charge of stealing others, but it would have been material on a charge of embezzlement. (*Reg. v. Southwood, 1 F. & F.* 356.)

So also evidence before a coroner of how deceased spent the evening before his death (*Reg. v. Courtney, 7 Cox, C. C.* 111), and in a bastardy case of payment to the mother (*Reg. v. Berry, Bell, C. C.* 46), were held material.

Where a witness is permitted to contradict evidence given in cross-examination, although such contradictory evidence is not legally admissible, yet perjury may be assigned upon it. (*Reg. v. Gibbon, L. & C.* 109.)

Where upon the trial of S. for robbery, the prisoner swore first that S. was in a certain house at the time of the robbery; secondly, that he had lived there for the last two years; and thirdly, that he had never been absent from it more than two or three nights together during that time, though the truth was that S. had been confined in prison during one of those years,—it was held that the second and third allegations were material, as tending to render the first more credible, and that the prisoner was rightly convicted of perjury assigned upon the second and third allegations. (*Reg. v. Tyson, L. R. 1 C. C. R.* 107; 37 *L. J., M. C.* 7.)

In an indictment for perjury in an answer in chancery, to a bill filed against a defendant for the specific performance of an agreement relating to the purchase of land, the defendant had relied on the statute of frauds (the agreement not being in writing), and had also denied having ever

entered into such an agreement, and upon this denial he was indicted; but it was held, that the denial of an agreement, which by the statute of frauds was not binding on the parties, was immaterial and irrelevant, and not indictable. (*R. v. Dunston*, *R. & M. C. N. P.* 109; *R. v. Benesech*, *Peake*, *Add. C.* 93.)

The vendor of goods having obtained a verdict in an action on a contract, upon proof of the same by bought and sold notes, the purchasers filed a bill in chancery for a discovery of other parol terms, and for equitable relief from the contract. The answer to the bill denied the existence of the alleged parol terms. On an indictment assigning perjury upon the allegation which contained such denial,—it was held, that the prayer of the bill being not to enforce the parol terms, but to obtain relief from the contract, the assignment of perjury was upon a matter material and relevant to the suit in chancery. (*Reg. v. Yates*, 5 *Jurist*, 636; 1 *C. & Marsh*, 132, *S. C.*)

A. was indicted for perjury, alleged to have been committed on the trial of B. for perjury. The indictment against A. averred that the evidence he gave on the trial of B. was material, and that B. was convicted. It appeared that B. was convicted and sentenced, but that the judgment against B. was afterwards reversed on writ of error:—it was held, that the reversal of the judgment against B. was no ground of defence for A., as showing that his evidence could not have been material; and that it did not negative the allegation that B. had been convicted. (*Reg. v. Meek*, 9 *Car. & P.* 513, *Williams*, J.; see also *Davis v. Lovell*, 4 *M. & W.* 678, and *Reg. v. Cooke*, 2 *Den. C. C.* 462.)

It seems not to be settled whether the materiality of the false evidence be a question for the jury or not. In *Reg. v. Lavey*, 3 *C. & K.* 26, and in *Reg. v. Goddard*, 2 *F. & F.* 361, it was left to the jury to say whether the evidence was material or not; but the better opinion seems to be that it is a question for the judge. (*Reg. v. Gibbon*, *L. & C.* 109; *per Channell*, B.; *Reg. v. Courtney*, 7 *Cox*, *C. C.* 111.)

Whether believed or not.—It hath been holden not to be material, upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended were in the event any way aggrieved by it or not; insomuch as this is not a prosecution grounded on the damage of the party, but on the abuse of public justice. (1 *Hawk. c.* 69, s. 9; *R. v. Crossley*, 7 *T. R.* 315.)

Not material whether believed or not.

In some cases where a false oath has been taken, the party may be prosecuted by indictment at common law, though the offence may not amount to perjury. Thus, it appears to have been holden, that any person making or knowingly using any false affidavit taken abroad (though a perjury could not be assigned on it here), in order to mislead our Courts of justice, is punishable by indictment as for a misdemeanour: and Lord *Ellenborough*, C.J., said, “that he had not the least doubt that any person making use of a false instrument in order to prevent the course of justice was guilty of an offence punishable by indictment.” (*O’Mealy v. Newell*, 8 *East*, 364; and see *R. v. Foster*, *R. & R.* 459.)

False oath indictable in some cases, though not assignable as perjury.

2. INDICTMENT FOR THE OFFENCE AT COMMON LAW.

Two or more defendants cannot be joined in one indictment for this offence, see *ante*, 1223.

Against two.

In order to shorten and facilitate indictments and prosecutions for perjury, the 23 Geo. 2, c. 11, s. 1, reciting that whereas by reason of difficulties attending prosecutions for perjury and subornation of perjury, those heinous crimes have frequently gone unpunished, whereby

On prosecution for perjury, it shall be sufficient to set forth the substance of the offence.

1. *Perjury
by the
Common
Law.*

wicked and evil-disposed persons are daily more and more emboldened to commit the same, to the great dishonour of God, and manifest let and hindrance of justice, enacts, that in every information or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what Court, or before whom, the oath was taken (averring such Court or person or persons to have a competent authority to administer the same), together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the Court, or person or persons before whom the perjury was committed, any law, usage, or custom to the contrary notwithstanding.

The provisions of this statute should be attended to.

In *R. v. Dowlin* (5 T. R. 317), Lord *Kenyon*, C.J., said, "We have occasion to lament, in almost all the trials for perjury, that the prosecutor does not avail himself of this excellent law, which was passed to obviate difficulties in drawing indictments for this offence." In the case referred to, the commission at the admiralty session had been unnecessarily set forth in the indictment; and it was admitted that where a prosecutor undertakes to set out in the indictment more of the proceedings than he need under this statute, he must set them forth correctly; but it was holden that the commission at the admiralty session, being set forth as directed to A., B., and C., and others not named, of which A., B., and C., amongst others, should always be one, the Court must take it to mean, that if either of the persons named of the quorum were present, it would be sufficient. (See 1 *Leach*, 201.) Where the indictment was exorbitantly long in stating unnecessarily the various proceedings on a former prosecution, the Court of Queen's Bench referred it to the master to see what part of the record was unnecessary, and make an order that the clerk of the peace should pay the expenses occasioned by the unnecessary matter.

Striking out superfluous allegations.

Any Court, judge, justice, etc., may direct a person guilty of perjury in any evidence, etc., to be prosecuted,

The 14 & 15 Vict. c. 100, s. 19, recites 23 Geo. 2, c. 11, and 31 Geo. 3 (1), and enacts, that it shall and may be lawful for the judges or judge of any of the superior Courts of common law or equity, or for any of her Majesty's justices or commissioners of assize, nisi prius, oyer and terminer, or gaol delivery, or for any justices of the peace, recorder or deputy recorder, chairman or other judge, holding any general or quarter sessions of the peace, or for any commissioner of bankruptcy or insolvency, or for any judge or deputy judge of any county Court or any Court of record, or for any justices of the peace in special or petty sessions, or for any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the superior Courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person so directed to be prosecuted until the next session of oyer and terminer or gaol delivery for the county or other district, within which such perjury was committed, unless such person shall enter into a recognizance with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of oyer and terminer or gaol delivery, and that he will then surrender and take his trial, and not depart the Court without leave, and to require any person he or they may think fit to enter into a recognizance, conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid, and to give to the party so bound to prosecute a certificate of the same being directed, which certificate

and commit the party, unless he enter into recognizance to appear and take his trial, and bind persons to give evidence;

and give certificate of prosecution being di-

shall be given without any fee or charge, and shall be deemed sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof the costs of such prosecution shall and are hereby required to be allowed by the Court before which any person shall be prosecuted or tried in pursuance of such direction as aforesaid, unless such last-mentioned Court shall specially otherwise direct; and when allowed by any such Court in Ireland, such sum as shall be so allowed shall be ordered by the said Court to be paid to the prosecutor by the treasurer of the county in which such offence shall be alleged to have been committed, and the same shall be presented for, raised and levied in the same manner as the expenses of prosecutions for felonies are now presented for, raised and levied in Ireland: Provided always, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

Great caution should be used in the exercise of this power, and the mere circumstance of witnesses contradicting each other is by no means a proof that one or the other is guilty of perjury. Had not experience shown the contrary, it would seem a mere truism to observe that there is a great distinction between an untrue statement and perjury; and nothing but very clear evidence that what a witness states is not only not true, but that it is *wilfully* and *deliberately* false, will justify a summary committal for perjury. It must be borne in mind, too, as much inconvenience and annoyance is cast upon the persons bound over to prosecute, that besides the belief that a witness has committed perjury, there should be reasonable grounds for believing that there is sufficient evidence to prove his guilt at the trial, for which purpose two witnesses or one witness and some corroboration, which will supply the place of another witness, are absolutely essential to support an indictment for perjury. The witnesses who are able to give the requisite evidence should also be bound over at the same time. It would also be advisable if, as is often the case, suspicions are created that the witness is about to commit perjury, that some qualified person should take his evidence down in writing to avoid the chance of a prosecution failing for want of something more satisfactory than the recollection of what the witness swore.

Sect. 20. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing was taken, made, signed, or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding either in law or in equity, and without setting forth the commission or authority of the Court or person before whom such offence was committed.

The words averring such Court, or person or persons, to have competent authority to administer the same, together with the proper averment or averments to falsify the matter or matters where the perjury or perjuries is or are assigned, which occur in 23 Geo. 2, c. 11, s. 1, are not repeated in this section. The above section does not alter the form of an indictment for perjury.

Sect. 21. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it

1. *Perjury by the Common Law.*

rected which shall be sufficient evidence of the same.

Extending the 23 Geo. 2, c. 11, s. 1, to other offences, and simplifying indictments for perjury and other like offences.

Extending the 23 Geo. 2, c. 11, s. 2, as to form of indictments for subornation of perjury and other like offences.

1. *Perjury by the Common Law.*

shall be sufficient, wherever such perjury or other offence aforesaid shall have been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offence, in manner and form aforesaid, to do and commit; and wherever such perjury or other offence aforesaid shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

On trials for perjury and subornation a certificate of the trial of the indictment on which the perjury was committed sufficient evidence of such trial.

Sect. 22. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanour, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where such indictment was tried, or by the deputy of such clerk or other officer (for which certificate a fee of 6s. 8d. and no more shall be demanded or taken), shall upon the trial of any indictment for perjury or subornation of perjury be sufficient evidence of the trial of such indictment for felony or misdemeanour, without proof of the signature or official character of the person appearing to have signed the same.

By the 14 & 15 Vict. c. 99, s. 16 (*ante*, tit. "*Oaths*"), all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence, may administer an oath to all such witnesses as are legally called before them respectively. (See *R. v. Hallett*, 20 *L. J.* 197, *M. C.*)

Inducement.

Inducement.]—Like in an indictment for a libel, some inducement is generally necessary to render the subsequent statements intelligible. In good pleading no more inducement should be stated than is absolutely necessary to explain the perjury assigned.

Time.

Time.]—The time of committing the perjury should sometimes be laid with precision. (*R. v. Aylett*, 1 *T. R.* 69.) Where an indictment for perjury, in an answer in the Exchequer, alleged that the bill was filed on the 1st day of December, but, on its production, it appeared to be entitled generally of the preceding Michaelmas term, as is the practice when a bill is filed in the interval between two terms: this was held to be no variance, because the day was not alleged as part of the record. (*R. v. Hucks*, 1 *Stark. Rep.* 521.) Where, however, the time is material with reference to the crime of the defendant, as, for instance, with reference to his previous knowledge of a fact, which knowledge he subsequently denies on oath, the time must be proved as laid. Therefore, where the assignments of perjury were alleged in this form, "whereas, in truth and in fact, the said defendant, at the time of effecting the said policy, that is to say, a certain policy of insurance, purporting to have been underwritten by ——— Kite by his agent Meyer, on the 13th of August, 1807, etc. (and by other writers specified in the indictment), well knew," etc., and, on the production of the policy, it appeared that it had been underwritten by Meyer for Kite on the 15th of August, the variance was held fatal. (*R. v. Hucks*, 1 *Stark.* 524.)

Where perjury was assigned on a bill filed in a particular term, and a copy produced was of a bill amended in a subsequent term, the amended bill being part of the original bill, it was held no variance. (*R. v. Waller*, 3 *Stark. Evid.* 856.) So also where the *nisi prius* record stated the trial to have been on a different day to that alleged in the indictment, there being no express reference to the record in the indictment. (*R. v. Coppard*, *Moo. & M.* 118; 3 *C. & P.* 59.) See "*Indictment*," *ante*, 28.

Place.]—As to the statement of place and venue, see "*Indictment*," Vol. III. Where the perjury had been committed in the city of Gloucester, which is a county of itself, it was held that the indictment might be found and tried by a jury of the county at large. (*R. v. Gough*, Dougl. 760; *R. v. Jones*, 6 C. & P. 137.)

When the party is indicted for perjury in an *affidavit*, the venue must not be laid in the county where the affidavit is used, but in the county where the offence was complete by taking the false oath; as where an affidavit is sworn before a commissioner in the country, and it is used in the Court of Queen's Bench sitting in Middlesex. (See *per Lord Kenyon*, 7 T. R. 319.)

The Judicial Proceeding or Court.]—It must appear on the face of the indictment that the oath was taken in a judicial proceeding and before a competent jurisdiction, and it must agree with the fact. An indictment for perjury committed before a magistrate, stated that the defendant went before the magistrate and was sworn, and that being sworn, he did falsely, etc., "say, depose, swear, charge, and give the said justice to be informed," that he saw the prosecutor commit bestiality: it was held, that this sufficiently showed that the oath was taken in a judicial proceeding. (*Reg. v. Gardiner*, 8 Car. & P. 737, *Patteson*, J.) But in a case of perjury committed before magistrates, the indictment merely stated that the defendant, intending to subject W. M. to the penalties for felony, went before two magistrates, and "did depose and swear," etc., setting out a deposition, which stated, that W. B. had put his hand into the defendant's pocket and taken out a £5 note, and assigning perjury upon it: it was held that this was bad, as it did not show that any charge of felony had been previously made, or that the defendant then made any charge of felony, or that any judicial proceeding was pending before the magistrate. (*Reg. v. Pearson*, 8 Car. & P. 119. And see *R. v. Wood*, *Russ. on Crimes*, vol. iii. pp. 53, 57, 4th ed.)

1. *Perjury by the Common Law.*

Place.

The judicial proceeding or Court.

Where perjury was charged to have been committed in that which was in effect the affidavit on an interpleader rule; and the indictment set out the circumstances of the previous trial, the verdict, the judgment, the writ of *fiery facias*, the levy, the notice by the prisoner to the sheriff not to sell, and the prisoner's affidavit that the goods were his property, but omitted to state that any rule was obtained according to the provisions of the Interpleader Act: it was held, that the indictment was bad, as the affidavit did not appear to have been made in a *judicial* proceeding (for anything that appeared it might have been a voluntary oath. (*Per Coleridge*, J., in *Reg. v. Bishop*, 1 Car. & Marsh, 302.)

An indictment for perjury upon the hearing of an information for penalties under the Beer Act, 1 Will. 4, c. 64, s. 15, did not allege that the magistrates were acting for the division in which the house was situated, and upon that ground was held to be bad. (*Reg. v. Rawlins*, 8 C. & P. 439.)

An indictment for perjury on an appeal before commissioners of taxes must show that the appeal was one they had jurisdiction to try, in order to show they had authority to administer the oath. (*R. v. Overton*, 4 Q. B. 83. And see *Anon.* 1 Cox, C. C. 50.)

And it is sufficient to allege that a county Court judge had competent authority to administer the oath without any allegation of jurisdiction (*Reg. v. Lavey*, 2 Den. C. C. 504; 3 C. & K. 26); and so also of an assistant barrister (*Reg. v. Lawlor*, 6 Cox, C. C. 187); and so of a commissioner to administer oaths, and empowered to act in a matter of insolvency (*Walker v. Reg.* 8 E. & B. 439).

An indictment for perjury committed before commissioners of bankruptcy in an examination touching the bankrupt's estate, should allege that there was a trading petitioning creditor's debt and act of bankruptcy. (*R. v. Jones*, 4 B. & Ad. 345.) But if the indictment was for

1. *Perjury by the Common Law.*

The Court must be correctly described.

perjury committed in the preliminary proceedings before the commissioners to ascertain whether the party should be adjudged bankrupt or not, it would seem that the indictment would be good, although it omitted to state that there was a good petitioning creditor's debt. (*R. v. Evington*, 1 C. & M. 319.)

The Court by which the oath was administered must be correctly described. An allegation that the oath was administered before justices assigned to hold the assizes, when by the evidence it appeared that the oath was administered when the judge was sitting under the commission of oyer and terminer and gaol delivery, was holden to be a fatal variance. (*R. v. Lincoln*, R. & R. 421.) But an indictment for perjury in a cause tried at the assizes has been holden good, although it alleged the oath to have been taken before one only of the judges in the commission, whereas the names of both judges were, as usual, inserted in the *nisi prius* record. (*R. v. Alford*, 1 Leach, 150.) Where the indictment alleged that the cause came on to be tried before Lloyd, Ld. Kenyon, etc., William Jones being associated, etc., and from the judgment-roll it appeared that Roger Kenyon was associated, etc., the variance was held fatal. (*R. v. Eden*, 1 Esp. R. 97.) Where the indictment alleged a bill of discovery filed in the Exchequer (in the answer to which perjury was assigned) to have been filed on a day specified, viz. 1st of December, 1807, and it appeared, on the production of the bill, to have been filed in the preceding Michaelmas term, according to the practice of the Court where a bill is filed in vacation, it was held that the variance was immaterial, the day not having been alleged as part of the document. (*R. v. Hucks*, 1 Stark. 521.) Where the perjury was assigned in answer to a bill alleged to have been filed in a particular term, and a copy produced was of a bill amended in a subsequent term by order of the Court, it was held to be no variance, the amended bill being part of the original bill. (3 Stark. Evid. 1138.) Where an indictment for perjury, assigned on evidence given in the Palace Court, described the Court as "the Court of the King's Palace at Westminster," and it appeared from the record of the trial below, that it was called "the Court of the King's Palace of Westminster," it was held no variance. (*R. v. Israel*, 3 D. & R. 234.) And where the same indictment averred that the cause in which the alleged perjury was committed "came on to be tried, and was then and there duly tried by a jury of the county," and the record of the trial stated that the jury came of the neighbourhood of Westminster, it was held, that as the cause was in fact so tried, and no county being mentioned in the record, it was no objection. (*Id.*) Where an indictment for perjury, in setting out the record of a conviction, stated an adjournment to have been made by Const, Esq., and A., B., C., and D., and others, their fellow-justices, etc., and an examined copy of the record of conviction, when produced, stated the adjournment to have been made by Const, Esq., and E., F., G., and others, etc., the variance was held fatal, unless the defect was supplied by evidence of an adjournment made by the persons stated in the indictment. (*R. v. Bellamy*, R. & M. C. N. P. 171.) On a charge of perjury, alleged to have been committed before commissioners to examine witnesses in a chancery suit, the indictment stated that the four commissioners were commanded to examine the witnesses. Their commission was put in, and by it the commissioners, or any three or two of them, were commanded to examine witnesses: it was held a fatal variance, and the judge would not allow it to be amended under the 9 Geo. 4, c. 15. (*Reg. v. Hewins*, 9 Car. & P. 786.) Where perjury was assigned to have been committed before certain justices "assigned to keep the peace in and for the said county and acting in and for the borough of T., in the said county," and it appeared that the justices were not justices for the county, it was held, that the judge at the trial was right in striking out the words "the said county," under the powers of amendment given by the 14 & 15 Vict. c. 100, s. 1. (*Reg. v. Western*, 37 L. J., M. C. 81; L. R., 1 C. C. R. 122.)

It is unnecessary, since the 23 Geo. 2, c. 11, *ante*, 1227, to set forth the commission from which the *authority of the Court* is derived, in which the perjury was committed. Nor is it necessary to set out the *nature of the authority of the person or Court administering the oath*. (*R. v. Callanan*, 6 B. & C. 102; 9 D. & R. 97, S. C.) But it is necessary to aver concisely they had competent authority to administer the oath. (*R. v. Lyme Regis*, Dougl. 156.)

1. *Perjury by the Common Law.*

Authority of Court.

The Oath.—It must be averred positively and distinctly that the defendant was regularly *sworn*, and deposed, etc. Therefore, in an indictment in which perjury was, by the first count, charged to have been committed at a trial therein mentioned, and *another* count alleged that, at the trial, the defendant was found guilty, “by means of the false and material testimony of the defendant in the first count mentioned,” and that a rule *nisi* for a new trial was granted, and that the defendant, knowingly, falsely, wilfully, and corruptly, made affidavit that the evidence given by him at the trial was true, “whereas it was false in the particulars in the first count assigned and set forth;” this latter count was held bad, for not averring distinctly that the defendant was sworn as a witness, and deposed to certain facts at the trial, instead of leaving it to be taken by intendment. (*R. v. Stevens*, 5 B. & C. 246; *R. v. Richards*, 7 D. & R. 665.) It is sufficient, however, in all cases, to allege in the indictment that the defendant was duly sworn. (*R. v. M’Carthur, Peake*, 155.) And where the indictment averred that the defendant was sworn on the holy gospel of God, proof that the defendant was sworn and examined as a witness was held sufficient to support the averment.

The oath.

R. v. Rowley, R. & M. N. P. C. 302.) Where it was averred in an indictment that the defendant was sworn on the gospels, and he appeared to have been sworn according to the *custom of his own country*, this was considered as a variance which would have been fatal, had not the indictment been saved by proof that he was *previously* sworn in the ordinary mode (*Ib.*); *sed quare*, for how can perjury be assigned upon an oath which the defendant *conscientiously* does not consider binding? (*Collyer’s Stat.* 474.)

It is not necessary to set out the jurat of the affidavit (*R. v. Emden*, 9 East, 437); nor is it necessary to state or prove that the affidavit was affiled in or exhibited to the Court, or in any manner used by the defendant or others. (*R. v. Crossley*, 7 T. R. 315.)

The False Swearing.—It should be averred that the defendant *falsely* swore, etc. (*R. v. Perrott*, 2 M. & Sel. 385; *Reg. v. Oxley*, 3 C. & K. 317.) An indictment at common law, alleging that the defendant falsely, maliciously, wickedly, and corruptly, swore, etc., without saying “*wilfully*,” has been held to be sufficient, on the ground that the former words include the latter. But the word *wilfully* is essential in an indictment on the statute of Elizabeth. (*Cox’s case*, 1 Leach, 71, 83, 4th ed. And see *R. v. Bent*, 2 C. & K. 179.) And the words *wilfully* and *corruptly* cannot both be omitted in the indictment at common law. (*R. v. Stevens*, 5 B. & C. 246; *R. v. Richards*, 7 D. & R. 665.) If the same person swears contrary ways at different times, it should be averred on which occasion he swore wilfully, falsely, or corruptly. (*R. v. Harris*, 5 B. & Ald. 926; 1 D. & R. 578, S. C.)

Defendant falsely swore.

The Matter sworn to.—Unlike to indictments for libels, it will suffice in an indictment for perjury to set out the *substance* of what the defendant swore. (See 23 Geo. 2, c. 11, s. 1, *ante*, 1227; 6 B. & C. 103; *R. v. Grendall*, 2 C. & P. 563; *R. v. Coppard*, 3 C. & P. 59; 1 M. & M. 118, S. C.) The matter falsely sworn to need not be prefaced with the words, “to the tenor and effect following,” “as follows,” or “in words,” or “figures following,” or with other expressions which require an exact

The matter sworn to.

1. *Perjury*
by the
Common
Law.

recital; but it should rather be "in substance and to the effect following." (2 *Campb.* 138; *Cro. C. C.* 7th ed., 573, n. (a); *Clay's case*, 2 *Russ.* 1785; 2 *Chit. C. L.* 309.) Or "in manner and form following, that is to say," which allow of a greater latitude. (1 *Leach*, 192.)

Variance.

But, in every case, accuracy is required, and any *substantial* variance will be fatal, unless it be allowed by the judge to be amended under the 9 Geo. 4, c. 15, and 14 & 15 Vict. c. 100. In perjury in an affidavit, if a word were accidentally omitted in the original document, it must not be supplied as if sworn, but the omissions must be explained by an innuendo. (*R. v. Taylor*, 1 *Campb.* 404; *R. v. Leefe*, 2 *Campb.* 134.) Where an indictment, in setting out the *substance and effect* of a bill in equity, stated an agreement between the prosecutor and the defendant respecting *houses*; and the word in the bill was *house* in the singular number, this was held a fatal variance (*R. v. Spencer*, *R. & M.* 98); though, probably, since the 9 Geo. 4, c. 15, and the 14 & 15 Vict. c. 100, this would be allowed by the judge to be amended under the provisions of these Acts. (See tit. "*Amendment*," Vol. I.) Where an indictment for perjury stated, that in an inquiry before two justices on an information under an excise statute, it became a material question where a certain individual was at four, A.M., on the 2nd of July, and that the defendant said she had been in his company from two on the same morning until four, and on the trial for perjury, the evidence was that she had said she had been in his company from eleven till half-past four, *Parke, J.*, doubted whether the evidence supported the allegation; but, in a conference with *Bolland, B.*, he inclined to think it did. (*Anon.* 1 *Lew.* 271.) In an indictment for perjury before a committee of the House of Commons, on an election petition, it was stated that A. B. and C. D. were returned to serve as burgesses for the said borough of New Malton, and the indenture, when produced, described them as returned for Malton, without the epithet "*New*," the variance was held fatal. (*R. v. Leefe*, 2 *Campb.* 134, 141.) But it would suffice to say, that the election was had "by virtue of a certain precept of the high sheriff of the county, by him duly issued to the bailiff of the said borough of New Malton," though the precept varied, because it is said not to be matter of description. (*R. v. Leefe*, 2 *Campb.* 140; 2 *Chit. C. L.* 310. As to other variances, see *R. v. Dudman*, 7 *D. & R.* 324; *R. v. Dunn*, 1 *D. & R.* 10; *R. v. Coppard*, 3 *C. & P.* 59; *R. v. Israel*, 3 *D. & R.* 234; *R. v. Carter*, 6 *Mod.* 168; *R. v. Greive*, 1 *Ld. Raym.* 260; *R. v. Scole, Peake, N. P.* R. 112; *R. v. Eden*, 1 *Esp. R.* 97; *R. v. Lincoln, R. & R.* 421; *Reg. v. Fairburn, Russ. on Crimes*, vol. iii. p. 42, 4th ed.; *Reg. v. Child*, 5 *Cox, C. C.* 197.)

When perjury is assigned in several parts of an affidavit, those parts may be set out in the indictment, as if continuous, though they are, in fact, separated by the introduction of other matter. (*R. v. Callanan*, 6 *B. & C.* 102; 9 *D. & R.* 97, *S. C.*; and see *R. v. Solomon, R. & M. C. N. P.* 252.)

As to variances arising out of proceedings in Chancery, see *R. v. Roper*, 6 *M. & S.* 327; *R. v. Benson*, 2 *Campb.* 508; *R. v. Powell, R. & M. N. P. R.* 101. In ecclesiastical Courts, *R. v. Bailey*, 7 *C. & P.* 264; *R. v. Pearce*, 3 *B. & A.* 579. In County Courts, *Lavey v. Reg.* 2 *Den. C. C.* 504.)

Wrong spelling (*Beech's case*, 1 *Leach*, 133), or omission of a word (*May's case, cor. Buller, J., Russ. on Crimes*, vol. iii. p. 45, 4th ed.), are not fatal variances.

But where the variance is in substance and effect, it is fatal. (*R. v. Spencer, R. & M. N. P. R.* 97; *Anon.* 1 *Lew.* 27; *R. v. Leech*, 2 *Man. & Ry.* 119.)

Innuendo.

[*Innuendo*.]—In setting forth the *matter* in the record on which the assignment is made, as well as the perjury, it is frequently necessary to

make use of innuendoes in order to explain the meaning. (2 *Chit. C. L.* 310.) An innuendo is defined to be a mode of explaining some matter already expressed: it serves to point out where there is precedent matter, but can never introduce a new charge; it may elucidate what is already averred, but cannot add or enlarge, or alter, its sense. (*R. v. Greepe*, 2 *Salk.* 513; 1 *Ld. Raym.* 256; 12 *Mod.* 139, *S. C.* See *Roberts v. Camden*, 3 *East*, 95; 2 *Chit. C. L.* 310.) If it is intended to explain anything, the matter must first be put on the record for it to explain. (4 *Co.* 20, *a.*) See further as to innuendoes, tit. "*Libel*," ante, 344.

An indictment for perjury alleged that a petition was presented to the House of Commons against the return of B. on the ground of bribery: that, shortly before his election, to wit, on the 6th July, B. and C. went to the house of defendant to solicit his vote; that at the time of the petition it was a material question, whether at the said time when B. and C. went to the defendant's house, a certain act of bribery took place; that the defendant was a witness sworn to speak the truth of and concerning the said premises, and the defendant deposed touching the said election, and the matter of the petition; that shortly before B.'s election, B. and C. came on a canvassing visit to the defendant's house, and that the act of bribery then took place (innuendo), thereby meaning, that at the said time when B. and C. went to the defendant's house, as aforesaid, the act of bribery was committed:—held, on motion in arrest of judgment; first, that the allegation that the defendant deposed, "touching the said election," etc., sufficiently pointed to the matter whereupon the defendant was sworn as a witness; secondly, that the innuendo did not introduce new matter, as from the introductory averment it appeared there was a canvassing visit on the 6th July, and the deposition of the defendant was shown to refer to that particular time and no other. (*Reg. v. Verrier*, 4 *Per. & D.* 161; 12 *Ad. & E.* 317.)

If any use be made of the innuendo which is imperfect, it cannot be rejected as surplusage, nor will it be cured by verdict. (*R. v. Greepe*, 1 *Lord Raym.* 256; 2 *Chit. C. L.* 311.)

But where the innuendo and the matter it introduces are altogether impertinent and immaterial, it may be rejected as surplusage. (*R. v. Aylett*, 1 *T. R.* 65; *Roberts v. Camden*, 9 *East*, 93.)

Where the oath of the defendant was that he had been arrested before he got to his own house, in the parish of St. Martin's-in-the-Fields, an innuendo, his house in the Haymarket, in St. Martin's, etc., is good, as only a more particular description of the same house. So, an oath being that the defendant was arrested upon the steps of his own door, an innuendo that it was the outer door is good. (*R. v. Aylett*, 1 *T. R.* 70.)

Assignments of Perjury.—The indictment must assign positively the manner in which the matter sworn to is false. (*R. v. Aylett*, 1 *T. R.* 70.) A general averment that the defendant falsely swore, etc., upon the whole matter, is not sufficient: the indictment must proceed, by special averments, to negative that which is false. (*R. v. Perrott*, 2 *M. & Sel.* 385.) Upon this principle it has been held, that if an insolvent debtor has sworn that his schedule contains a full, true, and perfect account of all debts owing to him, at the time of his petitioning for his discharge, an assignment of perjury on that oath, stating that "whereas, in truth and in fact, the said schedule did not contain a full, true, and perfect account," etc., (in the words of the oath), is too general; for it ought to state what debt he is charged with omitting. (*R. v. Hepper*, 1 *C. & P.* 608; *R. & M. C. N. P.* 210, *S. C.*)

An indictment stated that the defendant swore that a particular fact occurred on the day on which a certain memorandum bore date, and at the time of making a certain bill of exchange, without averring that they were the same days: and the assignment of perjury alleged that the fact did not occur on the day on which the said memorandum bore date:—it was held, uncertain, and bad. (*Reg. v. Burraston*, 4 *Jurist*, 697.—Q. B.)

1. *Perjury*
by the
Common
Law.

Assignments of
perjury.

1. *Perjury
by the
Common
Law.*

It was made a question, but not decided in that case, whether the omission to assign perjury upon one of several questions alleged to have been material, vitiates the indictment. (*Ib.*)

An indictment in which it is intended to assign perjury upon several statements in the defendant's evidence relating to several different matters, should allege that there were several material questions, and certain distinct and separate assignments of falsehood upon each. (*Ib.*)

When the defendant swears only to belief, it may be proper to aver, "that he well knew" the contrary of what he swore, as in 4 *Wentw.* 231; 2 *Chit. C. L.* 312.

It should be here observed, that it will suffice to convict the defendant to prove any one of the material assignments of perjury. (*R. v. Rhodes*, 2 *Lord Raym.* 886; *R. v. Leefe*, 2 *Campb.* 138.) Yet, if the least part of one entire material assignment be disproved, it will not suffice. (*R. v. Leefe*, 2 *Campb.* 134.) But as to this case see the doubt expressed in *Russ. on Crimes*, vol. iii. 87, 4th ed.

Perjury cannot be assigned on contradictory statements without alleging which of them is false. (*R. v. Harris*, 5 *B. & A.* 926.)

Materiality.

(*Materiality.*)—It must be shown, either by a statement of the proceedings or by other averments, that the matter sworn to was material to the question depending. (*R. v. Aylett*, 1 *T. R.* 19; *R. v. McKeron*, 5 *T. R.* 316.) It is not sufficient if it only shows that the matter might or might not have been material. (*R. v. Bird*, 2 *Russ. on Crimes*, vol. iii. 68, 4th ed.) But, though an allegation of this fact is essential, yet it is not necessary to set forth so much of the proceedings of the former trial as will show the materiality of the question on which the perjury is assigned: it is sufficient to allege generally that the particular question became a material question. (*R. v. Dowlin*, 5 *T. R.* 311; *Lavey v. Reg.* 2 *Den. C. C. R.* 504.) And if the materiality appear on the record, it is unnecessary to aver it (*Trem. P. C.* 139; *R. v. Abraham*, 1 *M. & Rob.* 7; *Reg. v. Harvey*, 8 *Cox, C. C.* 99), though it is most usual to do so. (2 *Stark*, 423, n.; and see *Russ. on Crimes*, vol. iii. 62, 4th ed.)

An indictment for perjury stated, that it became a material question, whether, on the occasion of a certain alleged arrest, L., touched K., etc. The defendant's evidence, as set out, was, L. put his arms round him, and embraced him, innuendo, that L. had, on the occasion to which the said evidence applied, touched the person of K.: held, that the materiality of the evidence did not sufficiently appear; *et per Bayley, J.*—"An indictment must be good without the help of argument or inference. In the case of perjury, the indictment must show, either by a statement of the proceedings, or by other averments, that the question to which the offence related was material. That is not shown here in either way. The words on which perjury is assigned, if taken without innuendoes, have no necessary reference to the occasion of an alleged arrest; nor is there anything in the indictment to connect them with it. It is contended that the inquiry to which part of the evidence was an answer, would not have been relevant if applicable to any other matter and occasion than those now in question; but we knowing nothing of the merits of the case except from the indictment. The innuendoes rather introduce greater doubt than greater certainty, and lessen the force of the argument that only one occasion could have been contemplated. I am, therefore, of opinion, that the indictment is defective and the judgment ought to be reversed." (*R. v. Nicholl*, 1 *B. & Ad.* 21; see also *R. v. Hewins*, 9 *C. & P.* 786; *R. v. Goodfellow*, 1 *C. & M.* 569; *Reg. v. Buraston*, 4 *Jurist*, 697; where the averments of materiality were held bad.)

An indictment alleged that one E. S. had filed a bill in Chancery against the defendant J. C. and others, wherein he prayed that the defendant J. C. might answer the premises, that a purchase by J. C. of certain property belonging to the other defendants might be declared fraudulent

and void; and that it then and there became a material question, whether the said J. C. did advise the said other defendants that the said property should be sold; and that the said J. C. falsely and corruptly swore, and in and by his answer denied, that he had so advised: held bad in arrest of judgment, for want of sufficient averment of materiality. (*R. v. Cutts*, 15 L. T. 25, Q. B.; 4 Cox, C. C. 435.) Where the indictment charged that the defendant, upon a trial for rape, falsely swore that she never got a Mr. M. W. (he the said M. W. being then present in Court during the said trial) to write a letter for her; and that averment was prefaced by an allegation that it was a material question whether she ever got one M. W. to write a letter for her; and the evidence proved that, upon the trial for rape, Mr. M. W. was pointed out to her, and that she swore that she did not get him to write for her a letter which was produced and shown to her; and that that was false: it was held that the allegation of materiality was sufficient; and the identity of M. W. sufficiently shown. (*Reg. v. Bennett*, 20 L. J. 217, M. C.; 15 Jur. 497; 3 C. & K. 124; 5 Cox, C. C. 207.)

An averment that a question was material at the time the prisoner swore, without stating it to be material to the inquiry, is insufficient. (*Reg. v. Bartholomew*, 1 C. & K. 366; and see *Reg. v. Kimpton*, 2 Cox, C. C. 296.)

So an averment of materiality as to a Mr. Marshall, and an oath by the prisoner that he knew Mr. Marshall, the landlord of No. 4, York Terrace, "whereas the said person so described was the same person as one Marshall Legge," was held insufficient, as not sufficiently connecting the allegation of materiality with the assignment of perjury. (*Reg. v. Legge*, 6 Cox, C. C. 220.)

In *Reg. v. Webster, Bell*, C. C. 154, an account was held sufficiently referred to, though there had been several similar accounts. Where the terms of an agreement were averred to be material, and the prisoner had sworn there was no agreement of the kind, it was held that the particular terms of the agreement were immaterial. (*Reg. v. Smith*, 1 F. & F. 98.)

On the trial of a case of ejectment, where it was a material question whether J. had died before M., the prisoner, for the purpose of proving the probate of J.'s will, falsely swore that he had examined a paper, purporting to be a copy of J.'s will, with the original will at the registry of L., and the entry upon it with the entry in the Act book at the same registry. The judge offered to receive the evidence, but it was withdrawn: it was held, that the circumstance that it was withdrawn as evidence did not affect the question, as it could not purge the false swearing; and that as the evidence, if received, would have been material, the false swearing amounted to perjury. (*R. v. Philpotts*, 16 Jur. 67.)

Perjury in evidence which is afterwards withdrawn.

Conclusion.]—After the perjury has been assigned, the indictment usually concludes, "that so the defendant did commit wilful and corrupt perjury." (2 Leach, 860; Stark. 195.) But it should seem that this conclusion of law from the premises is immaterial. (See 2 Leach, 856; 2 Chit. C. L. 312; Ryalls v. Reg., 11 A. & E. 781; and 14 & 15 Vict. c. 100, s. 24.)

Conclusion.

Where, however, a man swore to a fact before a committee of the House of Commons, and afterwards swore directly the contrary before a committee of the House of Lords; an information setting out the substance of his evidence upon both occasions, and concluding "and so, etc., the said — did commit wilful and corrupt perjury,"—was holden bad; because it did not appear from it which oath was false, which true. (*R. v. Harris*, 1 D. & R. 578; 5 B. & Ald. 926.)

Where perjury is committed under such circumstances that it is only punishable by the provisions of a statute and not at common law, it ought to conclude "against the form of the statute." (See *R. v. Thornhill*, 8 C. & P. 575.)

1. *Perjury
by the
Common
Law.*

Number of wit-
nesses.

3. EVIDENCE OF OFFENCE AT COMMON LAW.

The evidence of one witness is not sufficient to convict a party of perjury, as, in such case, there would be only one oath against another. (*R. v. Lee, Russ. on Crimes, vol. iii. 78, 4th ed.*) "The rule that the testimony of a single witness is not sufficient to sustain an indictment for perjury, is not a mere technical rule, but a rule founded on substantial justice; and evidence confirmatory of that one witness, in some slight particulars only, is not sufficient to warrant a conviction." (*Per Coleridge, J., in Reg. v. Yates, 1 Car. & Marsh. 139.*) And, it seems, that is so, more especially, where the defendant receives a high character. (*Ibid.*) But two witnesses are not essentially requisite to disprove the particular fact sworn to; for, if any material circumstances be proved most clearly (*R. v. Champney, 3 Lew. 258*) by other witnesses in confirmation of the witness who gives the direct testimony of perjury, it may turn the scale, and warrant a conviction. (*R. v. Lee, and R. v. Yates, supra, 5 Jurist, 636, S. C.* And see *Reg. v. Towey, 8 Cox, C. C. 328; Reg. v. Boulter, 2 Den. C. C. 396; Reg. v. Braithwaite, 1 F. & F. 638; Reg. v. Owen, 6 Cox, C. C. 105; Reg. v. Shaw, L. & O. 579.*) And the rule requiring two witnesses does not, according to one case, apply where the evidence consists of the contradictory oath of the party accused. (*R. v. Knill, 5 B. & Ald. 929, n., and 2 Russ. 545.*) But that case has been doubted to be good law (*Reg. v. Hook, D. & B. 606; per Pollock, C.B.*), and it seems to have been decided upon the peculiar circumstances of the case. In more recent cases on indictments for perjury in giving evidence before the quarter sessions (*Reg. v. Wheatland, 8 C. & P. 238*), and before a grand jury (*Reg. v. Hughes, 1 C. & K. 519*), the depositions before the magistrates were put in by the prosecution, and they were held insufficient, because, without some further evidence, it was impossible to tell which statement was true and which was false. (See also *R. v. Jackson, 2 Lew. 270; and Russ. on Crimes, vol. iii. 82, n. (b), 4th ed.*)

The rule which requires two witnesses or one witness with sufficient corroboration applies to every assignment of perjury in an indictment. (*Reg. v. Parker, C. & M. 639.*)

It should be observed that the rule applies only to the proof of the falsity of the particular matter on which perjury is assigned, and that proof of other matters may be given by one witness. (*2 Hawk. P. C., c. 46, s. 10; Reg. v. Roberts, 2 C. & K. 607.*)

In one case, where there were three assignments of perjury upon evidence relating to one and the same transaction at one and the same time and place, it seems to have been considered that the jury ought not to convict on one of the assignments, although there were several witnesses who corroborated the witness who spoke to such assignment on the facts contained in the other assignments. The indictment stated that the defendant swore that Mr. B. and Mr. C. came to her husband's house; that Mr. C. said, "I will give him the £6 at Christmas;" and Mr. B. shook hands with her, and put something into her hand, and told her to give it to her husband, and that it was a sovereign wrapped up in some paper; and Mr. C. told her that he should not forget it was in his power to give her husband the £6 at Christmas. The assignments of perjury were—1st, That Mr. C. did not say that he would give the £6 at Christmas; 2ndly, that Mr. B. did not put a sovereign into the hand of the defendant; and, 3rdly, that Mr. C. did not tell the defendant that he should not forget it was in his power to give her husband the £6 at Christmas. Evidence was given in support of all the assignments of perjury. Lord Denman, C.J., in summing up, said, that as to the second assignment the proof lay almost entirely in the evidence of one witness, and therefore he did not see how the jury could convict of the perjury

imputed; but that on the others there was a distinct contradiction of the defendant's testimony by Mr. C., who was supposed to have offered the £6, and several other witnesses, and he left it to the jury to say whether there was not a strong body of evidence clearly supporting Mr. C.'s denial. (*Reg. v. Virrier*, 12 *Ad. & El.* 317; 2 *Russ. C. & M. by Greaves*, 650.)

But where upon an indictment for perjury alleged to have been committed in making a charge of an unnatural offence, in which the defendant had deposed that he saw the prosecutor committing the offence, and saw the flap of his trousers unbuttoned, and that he was there five minutes; and to disprove this the prosecutor swore that he did not commit the offence, and that his trousers had no flap on; and to confirm him his brother proved that at the time in question the prosecutor was only absent three minutes, and that the trousers he had on, which were produced in Court, had no flap; *Patteson, J.*, held that the corroborative evidence was quite sufficient to go to the jury, and upon a case reserved the judges held the conviction right. (*Reg. v. Gardiner*, 2 *Moo. C. C. R.* 95. And see *R. v. Mayhew*, 6 *C. & P.* 315.)

The degree of corroboration is not definable; it must be something which, in the opinion of the tribunal before which it is brought, is deserving of the name of corroboration. (*Reg. v. Shaw, L. & C.* 579.)

To convict a man of perjury a probable evidence is not enough; but it must be a strong and clear evidence, and the witnesses must be more numerous than those on the side of the defendant, for otherwise it is only oath against oath. (*Reg. v. Muscot*, 10 *Mod.* 194; *R. v. Broughton*, 2 *Str.* 1229; *R. v. Champney, ante*, 1238.) For there is this difference between a prosecution for perjury and a bare contest about property, that, in the latter case the matter stands indifferent, and, therefore, a credible and probable witness shall turn the scale in favour of either party; but, in the former, presumption is ever to be made in favour of innocence, and the oath of the party will have a regard paid to it until disproved. (*Reg. v. Muscot*, 10 *Mod.* 194.)

1. *Perjury by the Common Law.*

The evidence must be clear.

Proof of the evidence set out in the indictment by a witness who speaks from memory, but will not swear that he has given the whole of the defendant's former testimony, but says that he has stated, to the best of his recollection, all that was material to the transaction in question, and is positive that nothing was said qualifying the evidence proved, is sufficient to go to the jury. (*R. v. Rowley, R. & M. C. C. R.* 111; *Car. C. L.* 186, *S. C.*)

Speaking from memory.

Proof that the person before whom the oath was taken acted in the capacity of an officer fully capable of administering the oath, will suffice to raise a presumption that he had competent authority to receive it, it being a general presumption of law that an individual acting in a public capacity is duly authorized so to do. (*R. v. Verelst*, 3 *Campb.* 433; *Berryman v. Wise*, 4 *T. R.* 366; and see *R. v. Creswell*, 24th *Dec.* 1816; 2 *Chit. C. L.* 312, *a*; *R. v. Howard*, 1 *M. & Rob.* 187; *Reg. v. Newton*, 1 *C. & K.* 469; *Reg. v. Ward*, 3 *Cox, C. C.* 279.)

Court before whom oath taken.

An affidavit of debt filed in the Court of bankruptcy under 1 & 2 *Vict. c.* 110, s. 8, for the purpose of causing a person to be adjudged bankrupt was held to be properly sworn before a registrar of that Court by virtue of the 5 & 6 *Vict. c.* 122, s. 67. (*Dimon v. Reg.*, 12 *Q. B.* 1026.)

An arbitrator, to whom a cause is referred under the provisions of the "County Courts Act," 9 & 10 *Vict. c.* 95, s. 77, had no authority to administer an oath, and perjury therefore could not be assigned on a false oath taken before such an arbitrator. (*Reg. v. Hallett*, 2 *Den. C. C.* 237; but see now 14 & 15 *Vict. c.* 99, s. 16.)

Under 7 & 8 *Geo. 4, c.* 30, s. 30 (see now 24 & 25 *Vict. c.* 97, s. 62), it was held that a magistrate might adjudicate and convict, although there

1. *Perjury
by the
Common
Law.*

was no information upon oath. and therefore, he having had jurisdiction, perjury might be assigned upon a false oath at the hearing. (*Reg. v. Millard, Dears. C. C. 166.*)

To support an indictment for perjury at the hearing of an affiliation summons, it must appear that the mother resided within the petty sessional division in which the summons is heard. See 7 & 8 Vict. c. 101, s. 2. (*Reg. v. Hughes, 1 Dears. & B. C. C. 188.*)

If a person charged with being the father of a bastard appears before the justices, and makes no objection on the hearing, any defect in the summons or mode of issuing it (*Reg. v. Berry, Bell, C. C. 46.* See *Reg. v. Wiltshire, 12 Ad. & E. 793*), or its having issued upon insufficient evidence (*Reg. v. Simmons, Bell, C. C. 168*), are waived. See also *Turner v. The Postmaster-General, 34 L. J., M. C. 10.*

Sometimes special facts must be proved to show the existence of the authority where it is of a special nature, and limited to particular circumstances. Thus, on an indictment against a bankrupt for perjury on his last examination before the commissioners, it is necessary to prove the bankruptcy. (*R. v. Punshon, 3 Campb. 96; 2 Chit. C. L. 312, a; 1 Stark. C. L. 511; 3 Stark. Ev. 1135, 1136.* See also *R. v. Koops, 6 Ad. & E. 198; 1 N. & P. 828.*) But such strict proof would not be required if the indictment were against a witness for perjury before such commissioners. (*R. v. Punshon, 3 Campb. 96.*) But where a petitioning creditor's debt was alleged but not proved, it was held the prisoner could not be convicted. (*Reg. v. Ewington, 2 Moo. C. C. 223; C. & M. 319.*)

Occasion of
oath.

On an indictment for perjury, in an answer to a bill in equity, the bill, or a copy of it, must be proved as usual. (See *Leach, 179, 3rd ed.; Studdy v. Sanders, 2 D. & R. 348; Bull. N. P. 243, 244.*) As to the mode of proving it, see tit. "Evidence," Vol. II. (*R. v. Laycock, 4 C. & P. 326, and Reg. v. Christian, C. & M. 388.*)

On an indictment for perjury committed on the trial of a former cause, the *postea* alone is sufficient evidence to prove that there was a trial, without showing a copy of the final judgment. (*Bull. N. P. 243; 2 P. W. 563; Pitton v. Walter, Str. 162; 2 Hawk. c. 46, s. 56.*)

Where the prosecutor, to avoid a trial at *nisi prius*, put in the *nisi prius* record, with the minute of the verdict indorsed on it by the associate, there was no *postea* drawn up, and the associate stated that none could be drawn up, as a rule for a new trial was pending, it was held sufficient proof of the trial at *nisi prius*. (*R. v. Broune, 3 C. & P. 572; M. & M. C. N. P. 315, S. C.* And see *R. v. Smith, 8 B. & C. 341.*)

Where a book in which judgments were entered up was produced, and the clerk stated that interlocutory judgment was signed in the action, and that final judgment was afterwards entered up, it was held there was proof sufficient of the averment that the prisoner "caused to be entered up final judgment in the said action," and that the roll or examined copy need not be produced. (*Reg. v. Gordon, C. & M. 410.*)

An averment that issues came on to be tried and were tried, is proved, though a verdict was only taken upon one issue. (*Reg. v. Schlesinger, 10 Q. B. 670.*) So also that an action was tried, though the plaintiff was nonsuited. (*Reg. v. Bray, 9 Cox, C. C. 218.*)

Notice of set-off is not evidence of an action pending. (*R. v. Stoveld, 6 C. & P. 489.*)

The caption of the same Court of gaol delivery, the former indictment, with the indorsement of the prisoner's plea, the verdict and sentence, together with the minutes of the trial, are sufficient evidence of a trial for perjury at the Central Criminal Court. (*Reg. v. Newman, 2 Den. C. C. 390.*)

The clerk's book or a copy having the seal of the Court, and signed and certified as a true copy under the 9 & 10 Vict. c. 95, s. 111, is the proper proof of proceeding in a county Court. (*Reg. v. Rowland, 1 F. & F. 72.*)

For proof of suit in a prerogative Court, see *Reg. v. Turner*, 2 C. & K. 732.

In a bastardy case, it was held not sufficient to prove the minutes of the proceedings before the justices, which are only to refresh the memory of the witness, but the summons must be proved to show jurisdiction. (*Reg. v. Newall*, 6 Cox, C. C. 21.)

So also the information before the justices must be proved where perjury is charged on the hearing of it. (*Reg. v. Hurrell*, 3 F. & F. 271.)

The prisoner was convicted of perjury, committed upon the hearing of an affiliation summons. The information was proved, and it was shown that the putative father had appeared at the hearing, and evidence had been given upon both sides. The Court held that it was not necessary to refer to the summons or to give any evidence of its existence on the trial for perjury. (*Reg. v. Smith*, L. R. 1 C. C. R. 110; 37 L. J. M. C. 6.)

See also *Reg. v. Whybrow*, 8 Cox, C. C. 438; but see *Reg. v. Shaw*, L. & C. 579, and *Reg. v. Simmons*, Bell, C. C. 168, ante, 1240, where the defendant appears to the charge.

It should be distinctly proved what the charge was on the hearing of which the false evidence was given. (*Reg. v. Carr*, 17 L. T. N. S. 217.)

It was held that the sessions book was not sufficient evidence of the trial of a settlement appeal (*R. v. Ward*, 6 C. & P. 366), but the sessions book containing the orders and other proceedings of the Court, made up and recorded after each session, with an entry containing the style and date of the sessions, and the name of the justices in the usual form of a caption, no other record being kept, is good evidence. (*Reg. v. Yeoveley*, 8 A. & E. 806.)

It seems that the fact of a witness having been examined may be proved by parol. (*R. v. Brown*, M. & M. 315.)

On an indictment at common law for perjury in an affidavit sworn before the Court of Queen's Bench, it is not necessary to prove that the affidavit was filed or exhibited, or in any manner used by the party. (*R. v. Crossly*, T. R. 315.) But this is not so when the party is indicted under the statute of Elizabeth. (*Skin*. 403.) Where the perjury is assigned in an answer of the defendant in chancery, the answer itself must be produced from the proper office. (*Bull. N. P.* 239; *Bac. Ab. Ev.* 624; 3 *Stark. Ev.* 1138.) And, in an indictment for such perjury, it should be proved that the jurat is in the handwriting of a master in chancery. (*R. v. Morris*, 2 Burr. 1189; 1 *Leach*, 50; *R. v. Benson*, 2 *Campb.* 508.)

An affidavit of a marksman is inadmissible, unless it is shown to have been read over to him, but it is otherwise in the case of a party who can write: and it was also held that an affidavit referring to an inadmissible affidavit was itself inadmissible. (*R. v. Hailey*, 1 C. & P. 258.)

Where assignments of perjury allege that certain persons are debtors, evidence of others being so is inadmissible; and where there is a general assignment as well, it seems it would still be objected to. (*R. v. Mudie*, 1 M. & Rob. 128; *Reg. v. Parker*, C. & M. 639.)

The award of an arbitrator is not admissible to prove perjury in an affidavit made before the award. (*Reg. v. Moreau*, 11 Q. B. 1028.)

A conviction before justices is not admissible on a trial for perjury of a witness at the hearing of an information. (*Reg. v. Goodfellow*, C. & M. 569.)

So an insolvent's petition filed in the Court is evidence to prove the allegations in the indictment. (*Reg. v. Westly*, Bell, C. C. 193.)

After proof of loss of deposition in bankruptcy, an office copy is admissible. (*Reg. v. Milnes*, 2 F. & F. 10.)

The identity of the party charged with the perjury should be clearly proved: this may be done as in other cases. (See 1 *Leach*, 327; 3

1. *Perjury by the Common Law.*

Stark. Ev. 1139.) It is a question for a jury; but evidence of a conclusive nature is requisite, in order to show that the defendant was the person who took the oath. (3 *Stark. Ev.* 1139; and see *Reg. v. Barnes*, 10 *Cow, C. C.* 539.) It is sufficient evidence of the identity of the prisoner with the party who actually took the oath in question, if his handwriting be proved. (*R. v. Morris*, 2 *Burr.* 1189; 1 *Leach*, 50; *Anon.* 3 *Mod.* 117; 2 *Chit. C. L.* 312, b.)

The perjury itself.

The perjury itself will be sufficiently shown by evidence that the defendant swore in substance and effect as stated in the indictment. As to what is a variance, see *ante*, 1234; 3 *Stark. Ev.* 1141.

The whole of the defendant's evidence must be proved, because he might in one part have corrected any mistake made in another; though when the perjury was committed on a cross-examination respecting a fact not connected with the general merits of the case, proof of all the cross-examination will suffice. (*R. v. Jones, Peake*, 37; *R. v. Dowlin*, *id.* 170; 2 *Chit. C. L.* 312.) And it has been ruled, in a case of a similar nature, that it is sufficient for the prosecutor to prove all the evidence given by the defendant referable to the fact on which perjury is assigned. (*R. v. Rowley*, 2 *Moo. C. C.* 299; 3 *C. & P.* 498, *S. C.* See also *Reg. v. Smith*, 1 *F. & F.* 98.) But all matter relevant to the evidence ought to be proved in order to render the evidence intelligible. (*Id.*) An assignment of perjury, that the prosecutor did not at the time and place sworn to, or at any other time or place, commit bestiality with a donkey (as sworn to), or with any other animal whatsoever, is sufficiently proved by the evidence of two witnesses falsifying the deposition which had been sworn to by the defendant. (*Reg. v. Gardiner*, 8 *Car. & P.* 737; 2 *Moody, C. C.* 95, *S. C.*; and see *R. v. Mayhew*, 6 *C. & P.* 315.)

As to the mode of proving a bill and answer, and other written documents, see tit. "Evidence," Vol. II. (See *R. v. Christian*, 1 *C. & Marsh*, 388.)

Innuendoes.

The innuendoes, if material, should be proved. (1 *Stark. C. L.*, 2nd ed., 118; *R. v. Aylett*, 1 *T. R.* 63; *Roberts v. Camden*, 9 *East*, 83, 95; *Wilner v. Hold*, *Cro. Car.* 489; *Smith v. Carey*, 3 *Campb.* 461; 7 *Price*, 544, *ante*, 1235.)

Materiality.

The materiality of the perjury must be proved. (See *ante*, 1236.)

If the matter referred to by the averment be material, and affects the charge in such a manner that the omission of it would alter the character of the perjury assigned, either in the degree in which it is charged to be injurious, or in the degree of guilt, the Court will hold it must be strictly proved as it is charged, and the failure of proof, or the disproof of it, would be fatal. (See *Cowp. Rep.* 72; *Teesdale v. Clement*, 1 *Chit. Rep.* 603; *Shepherd v. Bliss*, 2 *Stark.* 510; *R. v. Burdett*, 4 *B. & Ald.* 314.) But, where the matters referred to consist of several particulars, some of which are material and others not, the Court will distinguish between such as are material and such as are not; and, if any one particular be disproved, to which the perjury is alleged to relate, if the charge would remain entire, and constitute perjury without such proof, the Court will not consider it to be a variance. (See *May v. Brown*, 3 *B. & C.* 113; 4 *D. & R.* 670, *S. C.*; 2 *Chit. C. L.* 312, d; *Reg. v. Boynes*, 1 *C. & K.* 65.)

Wilfulness.

To prove that the perjury was wilful and corrupt perjury, evidence may be given of expressions of malice used by the defendant towards the person against whom he gave the false evidence. (*R. v. Munton*, 3 *C. & P.* 498.) The defendant may prove that the matter sworn to falsely was not sworn to corruptly. Though perjury be assigned by the defendant in his answer, affidavit, or deposition in writing, the defendant may prove that an explanation was afterwards given, qualifying or limiting the first

answer. (3 *Stark. Ev.* 1145, 1146; *R. v. Da. Ma. Carr*, *Sid.* 418; 2 *Chit. C. L.* 312, d.)

Where perjury is assigned on an answer in equity, or an affidavit, etc., the part on which the perjury is assigned may be explained by another part, or even by a subsequent answer, etc. (1 *Sid.* 419; *Com. Dig. Just. of Peace* (B.), 102.)

On an indictment for perjury on a trial for an indecent assault, where the judge had directed an acquittal, the defendant and others were called to prove that no such assault could have been committed; and it was held that all evidence which was admissible on the trial of the assault was admissible for the purpose of showing that the prisoner was not guilty. (*Reg. v. Harrison*, 9 *Cox*, *C. C.* 503.)

Where an indictment for perjury contains several assignments, and no evidence is adduced upon one of those assignments, the defendant cannot show that the matter charged to be false in such one assignment is in fact true. (*R. v. Hemp*, 5 *C. & P.* 468.)

It is no defence that an affidavit has a defective jurat, and that, therefore, perjury cannot be assigned upon it (*R. v. Hailey*, 1 *C. & P.* 258; *Bill v. Bament*, 8 *M. & W.* 317), or that it has not been used for the purpose for which it was made, or that it has not been filed, or has a defective title. (*R. v. White*, *M. & M.* 271; *Hammond v. Chitty*, *Q. B.* See *Russ. on Crimes*, vol. iii. 105, 4th ed.; *Reg. v. Christian*, *C. & M.* 388.) But where perjury was charged upon an affidavit of service of notice, and the notice was not produced, it was held that the affidavit was inadmissible. (*Reg. v. Hudson*, 1 *F. & F.* 56.)

A party who is indicted separately with others for perjury in swearing to the same fact, either of them before conviction may be a witness on the trial of the others. (*Fortes. Rep.* 247; 2 *Roll. Ab.* 685; 2 *Hale's P. C.* 280.)

Evidence of joint offender.

On an indictment for perjury, alleged to have been committed at the quarter sessions, the chairman of the quarter sessions ought not to be called upon to give evidence as to what the defendant swore at the quarter sessions. (*Reg. v. Gazard*, 8 *Car. & P.* 595—*Patteson*, J.)

Evidence of chairman of sessions.

But the above case has been commented upon (see *Russ. on Crimes*, vol. iii. 86 n. (n)), and *Byles*, J., in *Reg. v. Harvey*, 8 *Cox*, *C. C.* 99, said that, though the judges of superior Courts ought not to be called upon to produce their notes, yet the same objection was not applicable to the judges of inferior Courts, especially where the judge is willing to appear.

An advocate and attorney for the defendant in a cause in a county Court is competent to prove from his notes the evidence given by the plaintiff. (*Reg. v. Morgan*, 6 *Cox*, *C. C.* 107.)

But a judge's notes are not admissible in evidence, though they may be used to refresh the memory of the party who took them. (*Reg. v. Child*, 5 *Cox*, *C. C.* 197.)

Admissions.—On the trial of an indictment for perjury on the crown side of the assizes, where it appeared that the attorneys on both sides had agreed that the formal proofs should be dispensed with, and that part of the prosecutor's case should be admitted, the judge would not allow this admission; and the prosecutor not being prepared with his formal proofs, the defendant was acquitted. (*Reg. v. Thornhill*, 8 *Car. & P.* 574.)

Admissions entered into between the attorneys in the prosecution.

4. PROSECUTION FOR, BY DIRECTION OF JUDGE.—CERTIORARI.—QUASHING, ETC., INDICTMENT.—TRIAL.—FORMAL ACQUITTAL, ETC.

The 23 Geo. 2, c. 11, s. 3, for the better preventing great offenders from escaping punishment by reason of the expense attending such prosecutions, enacts, that it shall and may be lawful to and for any of his Majesty's justices of assizes, or *nisi prius*, or general gaol delivery, or of

Prosecutions by direction of judge.

1. *Perjury
by the
Common
Law.*

any of the great sessions of the principality of Wales, or of the counties palatine, and they are hereby authorized (sitting the Court, or within twenty-four hours after) to direct any person examined as a witness upon any trial before him or them to be prosecuted for the said offence of perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and that it shall appear to him or them proper so to do; and to assign the party injured, or other person undertaking such prosecution counsel, who shall and are hereby required to do their duty, without any fee, gratuity, or reward for the same; and every such prosecution so directed as aforesaid shall be carried on without payment of any tax or duty, and without payment of any fees in Court, or to any officer of the Court who might otherwise claim or demand the same; and the clerk of assize, or his associate or prothonotary, or other proper officer of the Court (who shall be attending when such prosecution is directed) shall and is hereby required, without any fee or reward, to give the party injured, or other person undertaking such prosecution, a certificate of the same being directed, together with the names of the counsel assigned him by the Court; which certificate shall in all cases be deemed sufficient proof of such prosecution having been directed as aforesaid; provided that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

See also the 14 & 15 Vict. c. 100, s. 19, *ante*, 1228.

Certiorari.

It seems that the Court will not ordinarily, at the prayer of the defendant, grant a *certiorari* for the removal of an indictment for perjury, for such crime deserves all possible discountenance, and the *certiorari* might delay, if not wholly discourage, the prosecution. (2 *Hawk.* c. 27, s. 28; see *R. v. Richardson*, 2 *Leach*, C. C. 500. As to when a *certiorari* will be granted, see "*Certiorari*," Vol. I.)

Quashing indictment.

The Court generally will not quash an indictment for a crime of so enormous a nature as perjury, on the application of the defendant, for insufficiency in the caption or body of it, or for being preferred without proper authority (*Reg. v. Burnby*, 5 *Q. B.* 348), but will oblige him either to plead or demur to it. (2 *Hawk.* c. 25, s. 146; *Com. Dig. Indictment* (H.); *sed vide R. v. Thomas*, 3 *D. & R.* 621.) But they will quash it on an application by the prosecutor, whenever it appears so defective that the defendant cannot be convicted on it, in cases where the prosecution appears to be *bonâ fide* and not made for purposes of oppression or from malicious motives. (*R. v. Stratton*, 1 *Dougl.* 239.)

Judge may refuse to try a bad indictment.

A judge may refuse to try an indictment for perjury clearly bad in point of law (*R. v. Tremearne*; *R. & M. C. N. P.* 147, 210), or where the allegations negating the matter sworn are too vague. (*R. v. Hepper*, 2 *Moo.* 298.)

As to striking out superfluous matter, see *ante*, 1228.

Not triable at sessions.

The indictment cannot be tried at any quarter sessions. 5 & 6 Vict. c. 38, s. 1. (*R. v. Haynes*, 2 *Moo. C. C.* 298.)

Justices of the peace have now jurisdiction to receive an information and take depositions in a case of perjury, by the 11 & 12 Vict. c. 42, s. 1.

By the 22 & 23 Vict. c. 17, no indictment for perjury (amongst other offences) shall be found by any grand jury, unless the prosecutor has been bound by recognizance to appear, or unless the person has been committed to or detained in custody, or has been bound by recognizance to appear, or by the direction or consent of a judge or the attorney-general. (And see *Reg. v. Bray*, 3 *B. & S.* 255.)

This statute has been amended by the 30 & 31 Vict. c. 35, which enacts, by section 1, that the above provisions shall not extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences.

mentioned in the said Act, if such count or counts be such as may now be lawfully joined with the rest of such bill of indictment, and if the same count or counts be founded (in the opinion of the Court in or before which the same bill of indictment be preferred) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace, in the presence of the person accused or proposed to be accused by such bill of indictment, and transmitted or delivered to such Court in due course of law; and nothing in the said Act shall extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment if such bill be presented to the grand jury, with the consent of the Court, in or before which the same may be preferred.

1. *Perjury by the Common Law.*

It is the practice of the Central Criminal Court not to try an indictment for perjury arising out of a civil action, until that action is determined, unless the civil action be postponed by the Court, that the indictment may be tried first. (*R. v. Ashburn*, 8 C. & P. 50; and see *Reg. v. Ingham*, 14 Q. B. 396.)

Trial pending action.

A judge will not allow an indictment for perjury upon the crown side of the assizes to be tried on admissions, unless they be made at the trial by the defendant or his counsel. (*Ante*, 1243.)

Trial on admissions.

Where the party is acquitted, no new trial is allowed in the case of perjury. (*R. v. Fenwick*, 1 Sid. 135.) But a new trial will be granted after verdict for the queen, where it appears that the false swearing arose from mistake. (*R. v. Smith*, 2 Show. 165; 2 Jones, 163, S. C. See further, tit. "New Trial," ante, 1011.)

New trial.

With respect to the plea of *autrefois acquit* by a defendant who has been acquitted of an indictment for perjury, but not on the merits, it may be generally observed of such plea, that it is an established principle, that unless the first indictment were such as the defendant (or, if for a felony, the prisoner) might have been convicted upon by proof of the facts contained in the second indictment, an acquittal on the first indictment can be no bar to the second. (*R. v. Vandercom and Abbott*, O. B. Jan. 1796, 3 East's P. C. 519; *R. v. Emden*, 9 East, 437. See "*Autrefois Acquit*," Vol. I.)

Plea of *autrefois acquit*.

5. PUNISHMENT AND CONSEQUENCES.

Perjury at common law is punishable by fine or imprisonment, or both, at the discretion of the Court before whom the offender is convicted. And by the 3 Geo. 4, c. 114, hard labour may be added.

Perjury.

For the further punishment of perjury, or subornation of perjury, it is enacted by the 2 Geo. 2, c. 25 (made perpetual by the 9 Geo. 2, c. 18), that, besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the Court or judge before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction within the same county, for a time not exceeding seven years, there to be kept to hard labour during all the said time, or otherwise to be transported to some of his Majesty's plantations beyond the seas, for a term not exceeding seven years, as the Court shall think most proper; and thereupon judgment shall be given that the person convicted shall be committed or transported accordingly, over and besides such punishment as shall be adjudged to be inflicted on such person, agreeable to the laws now in being. By the 20 & 21 Vict. c. 3, and the 27 & 28 Vict. c. 47, the punishment will now be penal servitude, for any term not exceeding seven years and not less than five.

A person convicted of perjury is disabled from being a juror (2 Hawk. Perjured person

8. *Perjury, and Subornation of, etc.*

c. 43, s. 25); and before the recent Act of 6 & 7 Vict. c. 85, he was disabled from being a witness (2 *Hawk.* c. 46, s. 19; 4 *Bl. Com.* 137); though a pardon would restore his competency. (See tit. "*Pardon*," *ante*, 1114.)

not to be a juror,
and formerly not
a witness.

Subornation at
common law.

II. Subornation of Perjury at Common Law.

Subornation of perjury, by the common law, seems to be an offence in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath. (2 *Hawk.* c. 69, s. 9.) But it seemeth clear that, if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain that he is liable to be punished, not only by fine, but also by infamous corporal punishment. (1 *Hawk.* c. 69, s. 10; *R. v. Phillips*, 6 *East*, 464; *R. v. Higgins*, 2 *East, Rep.* 17; *R. v. Edwards*, 3 *Russ.* 1, 4th ed. See "*Attempts*," Vol. I.) 2 *East* 362 362

Two or more persons may be indicted for this offence. (*Reg. v. Rhodes*, 2 *Ld. Raym.* 886.)

Indictment.

By the 23 Geo. 2, c. 11, s. 2, in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the Court or person or persons before whom the perjury was committed, or was agreed or promised to be committed. (See section 1, *ante*, 1227, and see 14 & 15 Vict. c. 100, s. 21, *ante*, 1229.)

It does not seem to be necessary to set forth the means used by the defendant to effect his design; but it is sufficient to state that he, "by sinister and unlawful labours and means," procured the commission of the perjury. (*Reg. v. Rhodes*, 2 *Ld. Raym.* 886; 2 *Leach*, 796.) And, although it must appear on the face of the proceedings that the intention of the defendant was consummated, the word "procured" or "persuaded" will sufficiently convey this idea. (*Reg. v. Rhodes*, 5 *Ld. Raym.* 889.)

Evidence.

In support of an indictment for subornation, the record of the witness's conviction for perjury is no evidence against the suborners, but the offence of the perjured witness must be again regularly proved. (*R. v. Reilly*, 1 *Leach*, 454; 2 *Russ.* 1796; see further, *ante*, 1238-1243.)

Not triable at
sessions.

This offence is not triable at any quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

Punishment.

The punishment is prescribed by the 2 Geo. 2, c. 25, *ante*, 1245; and the same punishment may, it seems, be inflicted as in perjury itself. (See *Flower's case*, 5 *Co. Rep.* 99.)

III. Perjury, and Subornation of, by the 5 Eliz. c. 9.

Procuring any
witness to
commit perjury
in any matter
in suit, etc.,
punishable by
forfeiture of £40.

As to subornation of perjury, by the 5 Eliz. c. 9 [made perpetual by the 29 Eliz. c. 5, s. 2, and 21 Jac. 1, c. 28, s. 8], it is enacted (s. 3) that all and every such person and persons (a) which shall unlawfully and

(a) Although several persons cannot be joined in one indictment for perjury, yet for subornation of perjury, they may. (See *ante*, 1223.)

corruptly procure any witness or witnesses, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever now depending, or which hereafter shall depend in suit and variance, by any writ, action, bill, complaint, or information, in anywise touching or concerning any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages, in any of the courts, viz. the king's Courts of Chancery, the Star Chamber, the Whitehall, or elsewhere within any of the king's dominions of England or Wales, or the marches of the same, where any person or persons have, or from thenceforth should have authority by virtue of the king's commission, patent, or writ, to hold plea of land, or to examine, hear, or determine any title of lands, or any matter or witnesses concerning the title, right, or interest, of any lands, tenements, or hereditaments, or in any of the queen's majesty's Courts of record, or in any leet, view of frank-pledge, or law day, ancient demean Court, hundred Court, court-baron, or in the Court or Courts of the Stannary in the counties of Devon and Cornwall; or shall likewise unlawfully and corruptly procure or suborn any witness or witnesses, which shall be sworn to testify *in perpetuam rei memoriam*; that then every such offender or offenders shall, for his, her, or their said offence, being thereof lawfully convicted or attainted, lose and forfeit the sum of £40.

Sect. 4. And if it happen any such offender or offenders, so being convicted or attainted as aforesaid, not to have any goods or chattels, lands or tenements, to the value of £40, that then every such person, so being convicted or attainted of any of the offences aforesaid, shall for his or their said offence suffer imprisonment by the space of one half-year (a), without bail or mainprize, and to stand upon the pillory (b), the space of one whole hour, in some market town next adjoining to the place where the offence was committed, in open market there, or in the market town itself where the offence was committed.

3. *Perjury, and Subornation of, etc.*

Such offender not having goods, etc., to the value of £40 to suffer imprisonment.

Sect. 5. And that no person or persons, being so convicted or attainted, be from thenceforth received as a witness to be deposed and sworn in any Court of record (within England, Wales, or the marches of the same), until such time as the judgment given against the said person or persons shall be reversed by attain (c) or otherwise; and that, upon every such reversal, the parties grieved to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed to be first given against them or any of them, by action or actions, to be sued upon his or their case or cases, according to the course of the common laws of this realm. But now, by the 6 & 7 Vict. c. 85, witnesses are not to be excluded from giving evidence by reason of incapacity from crime or interest.

Persons convicted not to be witnesses until judgment reversed.

Competency restored.

Sect. 6 enacts, that if any person or persons, either by the subornation, unlawful procurement, sinister persuasion or means of any others, or by their own act, consent, or agreement, wilfully and corruptly commit any manner of wilful perjury, by his or their deposition in any of the Courts before mentioned, or being examined *ad perpetuam rei memoriam*, that then every person or persons so offending, and being thereof duly convict or attainted by the laws of this realm, shall for his or their said offence lose and forfeit £20, and to have imprisonment by the space of six months without bail or mainprize; and the oath of such person or persons so offending from thenceforth not to be received in any Court of

Persons committing perjury to forfeit £20 and to be imprisoned for six months; their oath not to be received until judgment reversed.

(a) See the 3 Geo. 4, c. 114; "*Hard Labour*," Vol. II.

(b) Now abolished by 1 Vict. c. 23.

(c) Attain is now abolished by 6 Geo. 4, c. 50, s. 60.

3. *Perjury, and Subornation of, etc.*

record within this realm of England or Wales, or the marches of the same, until such time as the judgment given against the said person or persons shall be reversed by attain (a) or otherwise [see now the 6 & 7 Vict. c. 85, *ante*, 1247]; and that upon every such reversal the parties grieved to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed to be given against them or any of them, by action or actions to be sued upon his or their case or cases, according to the course of the common laws of this realm.

And if such offender have not goods to the value of £20 they are to be set in the pillory, and to be disabled from being witnesses until judgment reversed.

Sect. 7. And if it happen the said offender or offenders so offending not to have any goods or chattels to the value of £20, that then he or they to be set on the pillory (b), in some market place within the shire, city, or borough where the said offence shall be committed, by the sheriff or his ministers, if it shall fortune to be without any city or town corporate; and if it happen to be within any such city or town corporate, then by the said head officer or officers of such city or town corporate, or by his or their ministers, and there to have both his ears nailed, and from thenceforth to be discredited and disabled for ever to be sworn in any of the Courts of record aforesaid, until such time as the judgment shall be reversed, and thereupon to recover his damages in manner and form before mentioned.

Disposal of forfeitures.

Sect. 8. One moiety of the said forfeitures shall be to the queen, and the other moiety to such person as shall be grieved, hindered, or molested by reason of any of the offences before mentioned, that will sue for the same, etc.

Trial of offences.

Sect. 9 enacts that as well the judge and judges of every such of the said Courts where any such suit shall be, and whereupon any such perjury shall be committed, as also the justices of assize and gaol delivery, and justices of peace at their quarter sessions, both within the liberties and without, may inquire of, hear, and determine all offences against the said Act. [See now the 5 & 6 Vict. c. 38, *Vol. V.*, tit. "*Sessions.*"]

Proclamation at assizes.

Sect. 10. This Act is to be proclaimed at all assizes.

Act is not to extend to spiritual courts.

Sect. 11 provides that this Act shall no way extend to any spiritual or ecclesiastical Court, but that every such offender, as shall offend in form as aforesaid, shall be punished by such usual and ordinary laws as are used in the said Court.

Nor to restrain other punishment of perjury.

And sect. 13 also provides, that this statute shall not restrain the authority of any judge having absolute power to punish perjury before the making thereof; but that every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done and used to do, to all purposes, so that they set not on the offender less punishment than is contained in this Act.

Statute extends only to witnesses.

Any Witness.—If the defendant perjureth himself in his answer, in the Chancery, Exchequer Chambers, or the like, he is not punishable by this statute; for it extendeth but to witnesses. (3 *Inst.* 166.) But he is punishable for the same by indictment at the common law. (*R. v. Morris*, 3 *Burr.* 1189.)

Mode of proceeding.

By any Writ, Action, Bill, Complaint, or Information.—It hath been resolved that these words are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended that the makers of the Act, who inflict a greater

(a) See note (c) *ante*, 1247.

(b) See note (b) *ante*, 1247.

penalty on subornation of perjury than on the perjury itself, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, further than in relation to that which they esteemed the greater. (1 *Hawk. c. 69, s. 19*; *Flower's case, 5 Rep. 99 a.*) But it is to be observed, that perjury or subornation in an action depending by indictment or criminal information, is not within this statute; but only in action depending by writ, action, bill, complaint, or information. (3 *Inst. 164.*)

3. *Perjury, and Subornation of, etc.*

Half to the Party grieved.]—It hath been collected from this clause, that no false oath is within the meaning of this statute which doth not give some person a just cause of complaint; and upon this ground it hath been said, that he who swears a thing which is true, but not known by him to be so, is not within this statute; because, howsoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause. Also from the same ground it seemeth clearly to follow that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it; for otherwise it cannot be said that any one was grieved by it; and therefore, in every prosecution upon this statute, it must appear upon the trial that there was such a suit depending, wherein the party might be prejudiced in the manner supposed. (1 *Hawk. c. 69, s. 23.*)

A party must be aggrieved.

Justices at their Quarter Sessions.]—And one justice (Mr. Dalton says) may bind the offender over to the sessions. (*Dalt. c. 70.*)

Justices at sessions.

But because the prosecution upon this statute is more difficult than by indictment at the common law, and some one must be aggrieved by the offence, offenders are seldom prosecuted upon this statute, especially at the sessions, and it seems generally the safer way to proceed by indictment at the common law, at the assizes, or in the Court of Queen's Bench.

Shall not restrain.]—From this it seemeth undoubtedly to follow, that the Court of Queen's Bench, etc., proceeding upon an indictment or information of perjury or subornation of perjury at the common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. (1 *Hawk. c. 69, s. 16.*) The 5 Eliz. prescribes the punishment; and see further, as to the punishment, the 2 Geo. 2, c. 25, *ante*, 1245.

Punishment.

Either by Subornation or otherwise.]—It is not necessary to set forth in the indictment, whether the party took the false oath through the subornation of another, or without any such subornation, these words being only superfluity. (1 *Hawk. c. 69, s. 18.*)

Indictment.

Wilfully and corruptly.]—These words are necessary in an indictment or action on this statute, and cannot be supplied by adding "against the form of the statute," or by concluding "and so a wilful and corrupt perjury did commit." (1 *Hawk. c. 69, s. 17*; and see *R. v. Stevens, 5 B. & Cres. 246*; *R. v. Richards, 7 D. & R. 655*; *ante*, 1237.)

An indictment for perjury cannot be maintained where the supposed perjury depends on the construction of a deed; but the remedy is by a civil action, if the defendant acted inconsistently with the obligation entered into. (*R. v. Crespigny, 1 Esp. 280.*)

Like other indictments upon statutes, the indictment should conclude "*contra formam*," though, if this be omitted, it will be good as at common law; and the defendant may be punished with the penalties which

4. *Perjury under Particular Statutes.* would be inflicted if the Act had not been referred to, but cannot be sentenced to the additional punishment prescribed in the statute. (2 *Hale*, 191; 2 *Cro. C. C. 8th ed.* 40. See observations in *Deacon, C. D.* 1008.)

Evidence.

In support of an indictment on the statute, the evidence should show that the affidavit, etc., was used conformably to the indictment. (*R. v. Crossley*, 7 *T. R.* 319.)

The party injured is a competent witness. (See the 6 & 7 *Vict. c.* 85.)

Costs.

The prosecutor, unless he is also a witness, and his name appears as such on the back of the bill, cannot claim costs as a party grieved, if the indictment is at common law, but only when it is framed on the statute. (*R. v. Doyle*, 1 *Esp. Rep.* 126.)

IV. Perjury under Particular Statutes.

The offence of perjury is created and punished by several particular statutes.

As to Perjury relative to Government Securities, see the 48 *Geo. 3*, c. 142; 52 *Geo. 3*, c. 129.

Annuities, Life, 10 *Geo. 4*, c. 24, s. 44.

Exchequer Bills, 51 *Geo. 3*, c. 15, s. 10; 55 *Geo. 3*, c. 184, ss. 52, 53.

Stamps, 7 & 8 *Geo. 4*, c. 53, ss. 29-31; *Vol. V.*, "*Stamps.*"

Newspapers, 6 & 7 *Will. 4*, c. 76, s. 6. See *ante*, tit. "*Newspapers.*"

Customs, 3 & 4 *Will. 4*, c. 51, s. 29. See "*Excise and Customs.*" *Vol. II.*

Excise, 7 & 8 *Geo. 4*, c. 53, s. 31. See "*Excise.*" *Vol. II.*

Making False Declarations in matters relating to the Revenues of Customs or Excise, Stamps and Taxes, or Post Office, at the Bank of England and in other cases, 5 & 6 *Will. 4*, c. 62, ss. 5, 18, 21.

Naval Stores, 6 *Geo. 4*, c. 78, s. 20; 39 & 40 *Geo. 3*, c. 89, s. 36. See "*Stores.*" *Vol. V.*

Naval and Military Pay, Pensions, etc., 11 *Geo. 4* & 1 *Will. 4*, c. 20, ss. 85, 86; 7 *Geo. 4*, c. 16, s. 16.

Registry of Ships, 17 & 18 *Vict. c.* 104, s. 103.

Naval Discipline Act, 29 & 30 *Vict. c.* 109, s. 67.

Trades Unions, 30 *Vict. c.* 8, s. 70.

Quarantine, 6 *Geo. 4*, c. 78, ss. 28, 29.

Pilotage, 6 *Geo. 4*, c. 125, s. 80. See "*Ships.*" *Vol. V.*

Vessels carrying Passengers, 6 *Geo. 4*, c. 16, s. 99. See "*Ships.*" *Vol. V.*

Slave Trade, 5 *Geo. 4*, c. 113, ss. 41, 58; 5 & 6 *Vict. c.* 42, s. 7.

Seamen's Wills, etc., 11 *Geo. 4*, c. 20, s. 85. See "*Seaman.*" *Vol. V.*

Army Prize Money, 2 *Will. 4*, c. 53, ss. 45, 46.

East India Prize Money, 1 & 2 *Geo. 4*, c. 61, s. 6.

Coals, 1 & 2 *Will. 4*, c. 76. See "*Coals.*" *Vol. I.*

Bread, 3 *Geo. 4*, c. 106, s. 24. See "*Bread.*" *Vol. I.*

Attorneys. See "*Attorney.*" *Vol. I.*

Insolvents, 1 & 2 *Vict. c.* 110. See "*Bankrupt.*" *Vol. I.*

Bankrupts, 6 *Geo. 4*, c. 16, ss. 36, 37, 99; 5 & 6 *Vict. c.* 122, s. 81; 24 & 25 *Vict. c.* 134, ss. 145, 221; 31 & 32 *Vict. c.* 104, s. 12. See "*Bankrupt.*" *Vol. I.*

- As to False Declarations in lieu of Oaths before Commissioners in Bankruptcy, see also 8 & 9 Vict. c. 48.
- Registry Acts, 2 & 3 Anne, c. 4, s. 18; 6 Geo. 4, c. 110. See "*Excise*," Vol. II.; "*Registers*," Vol. V.
- Inclosure Acts, 41 Geo. 3, c. 109, s. 43; 2 Will. 4, c. 45, s. 58. See "*Commons*," Vol. I.
- At Elections, 1 & 2 Vict. c. 48; 2 Will. 4, c. 45, s. 58; before Revising Barristers, *id.* 41, 50, 52; 6 & 7 Vict. c. 18, s. 81; 5 & 6 Will. 4, c. 76, s. 34. See *ante*, "*Parliament*."
- Oaths of Returning Officers. See 2 Geo. 2, c. 24, repealed by 17 & 18 Vict. c. 102, s. 1, except as to sect. 3, and so much as relates to Oaths of Returning Officers.
- Before House of Commons' Committees, 4 & 5 Vict. c. 58, s. 75, 76. See *R. v. Virrier*, 12 *Ad. & Ell.* 317: *ante*, tit. "*Parliament*." See also as to Committees of both Houses, 21 & 22 Vict. c. 78.
- Under Municipal Corporations Reform Act, 5 & 6 Will. 4, c. 76, s. 34.
- Election Petitions, 31 & 32 Vict. c. 125, ss. 31, 47.
- Making wilfully Untrue Statements respecting Lunatics, 8 & 9 Vict. c. 100; 16 & 17 Vict. c. 97, s. 122.
- Under the Public Health Acts, 11 & 12 Vict. c. 63, s. 147.
- Making False Declarations of Marriage, 6 & 7 Will. 4, c. 85, s. 38. See also 6 & 7 Will. 4, c. 86, s. 41; *R. v. Dewitt*, 2 *C. & K.*; *R. v. Mason*, 2 *C. & K.* 622. See *ante*, "*Marriage*."
- Making False Oaths or Declarations under the Mutiny Acts, 5 & 6 Vict. sess. 2, c. 12, s. 79. See *ante*, "*Military Law*."
- Quakers and Moravians. See *ante*, 1222.
- Officers of Court of Chancery to Administer Oaths, 11 Vict. c. 10. See also 16 & 17 Vict. c. 78, and as to Affidavits in connection with Registration.
- Consuls, etc., administering Oaths Abroad. See 18 & 19 Vict. c. 42; 21 & 22 Vict. c. 95, ss. 31, 33; c. 108, s. 20; 22 & 23 Vict. c. 31, s. 27.
- Lords of the Treasury may substitute Declaration for Oath in certain cases, and any false statements made will render the person so making them guilty of a misdemeanour; also the Universities of Oxford and Cambridge and other bodies, churchwardens, persons acting in turnpike trusts, persons taking out patents, pawnbrokers, etc., may make declaration instead of oath. 5 & 6 Will. 4, c. 62, ss. 2-12.
- Declarations instead of Oaths required by Bank of England on Transfer of Stock; for Recovery of Debts in American and New South Wales Colonies, sects. 14, 15.
- Declaration in Writing sufficient to prove Execution of any will, codicil, etc., sect. 16.
- Declaration in Suits on behalf of his Majesty, sect. 17.

5. *Power and Duty of Justices in.*

V. Power and Duty of Justices in.

Mr. Hawkins says, it hath been of late settled, that justices of the peace have no jurisdiction over perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* (in the commission) in its most proper and natural sense, is taken for such kind of injuries, it shall be under-

Jurisdiction of justices over.

6. *Forms.*

Not triable at sessions.

Form of commitment for.

Judges may direct prosecution for perjury.

stood in that sense only, or, at most, to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace; as libels and such like, which, on this account, have been adjudged indictable before justices of the peace, (2 *Hawk. c. 8, s. 38.*) And in the case of *R. v. Bainton*, 2 *Str.* 1088, an indictment at the quarter sessions for perjury at the common law was quashed for want of jurisdiction; and was said to have been done so about three years before in the case of *R. and Westiness*. (*Et vide Reg. v. Yarrington*, 1 *Salk.* 406; and see *R. v. Haynes*, 2 *Moo. C. C.* 298.) The question as far as regards the power of justices at sessions to try the offence, is now finally set at rest by the 5 & 6 *Vict. c. 38, s. 1*, which enacts, that the offences of perjury or subornation of perjury shall not be triable at any quarter sessions. And see 11 & 12 *Vict. c. 42, s. 1.*

A warrant of commitment of a prisoner charged with perjury stated that the said H. B., "in a certain affidavit made and sworn to by him before one C. C., a competent authority by law to administer the same, did falsely, wickedly, wilfully, and corruptly commit wilful and corrupt perjury:"—Held, that the commitment was bad, for that it did not state that the perjury was committed in the course of a judicial proceeding, or before a competent authority to administer an oath in a judicial proceeding. (*R. v. Bartlett*, 3 *Dowl. N. S.* 95.)

By 23 *Geo. 2, c. 11, s. 3*, the judge of assize (sitting the Court, or within twenty-four hours after), may, as we have seen, *ante*, 1243, direct any witness, if there shall appear to him a reasonable cause, to be prosecuted for perjury; and may assign the party injured, or other person undertaking such prosecution, counsel, who are to do their duty *gratis*: and such prosecution, so directed, shall be carried on without any duty or fees whatsoever. And see 14 & 15 *Vict. c. 100, s. 19, ante*, 1228.

VI. *Forms.*

(1.) Commitment for perjury.

(Commence as usual.) *for that the said C. D. on the day of* , A.D., *falsely, wickedly, wilfully, and corruptly, did commit wilful and corrupt perjury [in an affidavit to hold to bail then made by him the said A. B.; or, in the testimony which he gave upon oath, as a witness at the trial of a certain cause between C. D. and E. F. at the assizes for the county of York, then and there holden; or, in the testimony he gave upon oath, in his examination before J. P., Esq., one of her Majesty's justices of the peace, upon a certain complaint, or information, then and there preferred by one C. D.] [If the perjury be on a statute, add, against the form of the statute in such case made and provided.] And you, the said keeper, etc. [Conclude as usual.] See *R. v. Bartlett*, *supra*.*

(2.) Indictment for perjury in an affidavit to hold to bail made before a judge.

Central Criminal Court, } The jurors for our lady the Queen upon their oath to wit. } present, that C. D., wickedly and maliciously intending unjustly to aggrieve one A. B., and to put him to great expense, and also unjustly and maliciously to cause him to be arrested and held to bail by virtue of a certain writ of our lady the Queen, called a capias, to be sued out and prosecuted at the suit of the said C. D., out of the Court of our said lady the Queen, before the Queen herself at Westminster, in a certain action on promises [or, as the case may be] then pending in the said Court, wherein the said A. B. was the plaintiff, and the said C. D. was the defendant, to wit, on the day of* , in the year of the reign of our lady the now Queen Victoria, at London, in the parish of Saint Dunstan in the West, in the ward of Farringdon Without, and within the jurisdiction of the said Central Criminal Court, came in his proper person, before Sir J. P., knight, then being one of the justices of the said Court of our lady the Queen, before the Queen herself, and then

and there produced a certain affidavit in writing of the said C. D., and then and there before the said Sir J. P., knight, in due form of law was sworn, and took his corporal oath upon the Holy Gospel of God, concerning the truth of the matters contained in the said affidavit; and that the said C. D., being so sworn as aforesaid, then and there upon his oath aforesaid, before the said Sir J. P., knight, so being such justice as aforesaid, falsely, corruptly, knowingly, wilfully, and maliciously, in and by his said affidavit in writing, did depose and swear (amongst other things) in substance and to the effect following, that is to say, that the said A. B. was then justly and truly indebted unto him the said C. D. in the sum of [£100] for money lent and advanced [as in the affidavit] by the said C. D. to the said A. B., and at his the said A. B.'s request. [The affidavit may be set out verbatim with innuendoes, etc., or else its substantial meaning. Set out that part of the affidavit as to the defendant's going abroad, with assignments of perjury, as to that, if indeed the affidavit contain that statement, and it be false.] Whereas in truth and in fact the said A. B., at the time the said C. D. so deposed and swore as aforesaid, was not indebted to him the said C. D. in the sum of [£100] for [money lent and advanced by the said C. D. to the said A. B.]; and whereas in truth and in fact the said A. B. was not then indebted to the said C. D. in the sum of [£100] on any account whatsoever. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D., on the day and year first aforesaid, at London aforesaid, in the parish and ward aforesaid, and within the jurisdiction of the said Central Criminal Court, before the said Sir J. P., knight (so being such justice aforesaid), falsely by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, falsely, wickedly, wilfully, and corruptly did commit wilful and corrupt perjury; in contempt of our lady the Queen and her laws, to the great damage of the said A. B., to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

6. Forms.

Conclusion.

(Proceed as in the preceding form to the*, and then thus:) on the day of _____, in the _____ year of the reign of our lady the now Queen Victoria, at, etc. [venue], came in his proper person, before E. F., gentleman, then being a commissioner duly authorized and empowered to take and receive affidavits in, touching, and concerning matters and proceedings of and in the said Court of our said lady the Queen, before the Queen herself, and that the said C. D. then was duly sworn, and did take his corporal oath upon the Holy Gospel of God, before the said E. F.; and that the said C. D., being so sworn as aforesaid, then before the said E. F., as such commissioner as aforesaid, upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly, did depose, swear, and make affidavit in writing, in substance and to the effect following, etc. [Here set forth the perjury and assignments, and conclude as *supra*.]

(3.) The like where the affidavit was sworn before a commissioner of Q. B.

Central Criminal Court, } The jurors for our lady the Queen on their oath to wit. } present, that on the _____ day of _____ in the [1st] year of the reign of our lady the now Queen Victoria, a certain action was pending in the Court of our said lady the Queen, before the Queen herself, at Westminster, in the county of Middlesex, wherein one G. H. was plaintiff, and one I. J. was defendant, in which said action the said I. J. had before that time been arrested and held to bail for the sum of [£100], under and by virtue of a writ of *capias* before then duly sued out of the said Court of our said lady the Queen, before the Queen herself, in the said action. And the jurors aforesaid, on their oath aforesaid, do further present, that whilst the said action was depending in the said Court, that is to say, on the day and year aforesaid, C. D. came into the said Court of our said lady the Queen, before the Queen herself, the said Court then and still being at W. aforesaid, in the said county of M., and then offered himself to be, and became one of the bail of the said I. J., in the action aforesaid, and thereupon the said C. D. was then and there in due manner sworn in and by the said Court to make true answer to all such questions as should be demanded of him the said C. D. And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D., so being sworn as aforesaid, then, to wit, on the day and year aforesaid, at Westminster afore-

(4.) Indictment for perjury in justifying bail in Court of Q. B.

6. Forms.

Averment of
materiality.

Conclusion.

said, in the county aforesaid, in the said Court of our said lady the Queen, before the Queen herself, was interrogated concerning the circumstances and property of him the said C. D., and thereupon he the said C. D., in order to impose upon the said last-mentioned Court, and to prevent the said last-mentioned Court from knowing the true circumstances and property of him the said C. D., and his then and former situation in life, upon his corporal oath aforesaid, did say and depose in substance and to the effect following, that is to say, that [he the C. D. was possessed of £500 worth of wine] whereas in truth and in fact, at the time of his deposing and swearing as aforesaid, the said C. D. was [not possessed of £500 worth of wine]. And the jurors aforesaid, on their oath aforesaid, do further present, that on the occasion, and at the time of the said C. D. so swearing and deposing as aforesaid, it then became and was material for the purpose of allowing the said C. D. to become, or disallowing him from becoming such bail as aforesaid, to ascertain the truth of the matters so sworn and deposed to by him as aforesaid. And so the jurors aforesaid, on their oath aforesaid, do say, that the said C. D., on the said, etc., at, etc. aforesaid, upon his oath aforesaid, falsely, wickedly, and by his own act and consent did commit wilful and corrupt perjury, against the peace of our said lady the Queen, her crown and dignity.

(5.) The like in
justifying as bail
before a judge at
chambers,

Central Criminal Court, } The jurors for our lady the Queen upon their oath
to wit. } present, that heretofore to wit, on the
day of , in the year of the reign of our lady the
now Queen Victoria, a certain action had been brought and was then pending
in the Court of our lady the Queen, before her Majesty's justices of the bench at
Westminster, in the county of Middlesex, in which action one A. B. was plain-
tiff, and one B. C. then being in the custody of the warden of the Fleet was de-
fendant, and who had before then been arrested and held to bail in the said
action. And the jurors aforesaid upon their oath aforesaid, do further pre-
sent that such proceedings were therein had, and that afterwards, to wit, on the
day and year aforesaid, to wit, at London, in the parish of ,
the said B. C. by one J. T. his attorney in that behalf, gave the said A. B.
notice, that is to say, to Messrs. , his attorneys in that behalf,
that T. S. of H. in the county of , gentleman, and H. B. of L.
in the county of , gentleman, would, on then in-
stant, become bail for the said defendant in the said action, and would on the
same day justify themselves before Sir John Williams, knight, at his chambers
in Rolls Garden, Chancery Lane, as good and sufficient bail for the said de-
fendant, in the said action, and that the said T. S. was a housekeeper and
had been resident at his said place of abode at H. aforesaid for the last six
months, and that the said H. B. was a housekeeper and had been resident at
his said place of abode at L. aforesaid for the last six months. And the
jurors aforesaid upon their oath aforesaid do further present, that in pursuance
of the said notice, and whilst the said action was pending as aforesaid, to wit,
on the day of , at Rolls Gardens aforesaid, in
the parish of , in London, the said T. S. late of
labourer, did come and appear in his own proper person before the said Sir
J. W., knight, then being one of the justices of the Court of our said lady the
Queen, before the Queen herself at Westminster, and then and there offered
himself to become bail for the said B. C. in the said action, and then and there
before the said Sir J. W. aforesaid, offered to justify himself as such bail;
and in order that he might be and become such bail, and to justify himself
as such, and to be allowed and approved of by the said Court of our said
lady the Queen of the Bench as such bail, the said T. S. was then before the
said Sir J. W. so being such justice as aforesaid, duly sworn and took his
corporal oath upon the Holy Gospel of God, that he the said T. S. would true
answer make to all such questions as should be demanded of him in that be-
half. And the jurors aforesaid upon their oath aforesaid do further pre-
sent, that the said T. S. being so sworn as aforesaid, then before the said Sir
J. W. upon the occasion aforesaid, was interrogated concerning the circum-
stances and property of the said T. S., and thereupon he the said T. S. did
then before the said Sir J. W. upon his oath aforesaid, falsely, wickedly, wil-

fully, and corruptly answer and say, depose and swear in substance and effect, that he was possessed of property consisting of household furniture in his house at H. aforesaid, and that the same was worth £800, and that the same had been paid for, and that he had never been in prison for debt; whereas in truth and in fact, the said T. S. at the time of his so deposing and swearing as aforesaid, was not possessed of property consisting of household furniture in his house at H. aforesaid of the worth of £800, nor was he then possessed of any property whatever of the worth of £800, nor was he then possessed of any property whatever in any house at H. aforesaid, nor had he then any house whatever at H. aforesaid. And whereas in truth and in fact, the said T. S. at the time of his so deposing and swearing as aforesaid had been in prison for debt in this to wit, that to wit, on the _____ day of _____ he was in the custody of _____ in the prison of _____ and detained in such custody in the said prison, in a certain action before then brought and then pending in the Court of _____ by one _____ against the said T. S. for the recovery of a certain debt, amounting, to wit, to £ _____, and for and in respect of which the said T. S. was so detained in custody as aforesaid. And the jurors aforesaid upon their oath aforesaid do further present, that on the occasion of the said T. S. so deposing and swearing as aforesaid, it became and was material for the purpose of allowing him to become, or disallowing him from becoming such bail as aforesaid, to ascertain the truth of the matters so by him deposed and sworn to as aforesaid. And so the jurors aforesaid upon their oath aforesaid do say, that the said T. S. on the said _____ day of _____ in the _____ year of the reign aforesaid, at London aforesaid, in the parish and ward aforesaid, and within the jurisdiction of the said Central Criminal Court, before the said Sir J. W., falsely, maliciously, and wickedly in manner and form aforesaid, did commit wilful and corrupt perjury, in contempt of our said lady the Queen and her laws, to the great damage of the said A. B., and against the peace of our said lady the Queen, her crown and dignity.

Central Criminal Court, } The jurors for our lady the Queen upon their oath
to wit. } present, that heretofore, to wit, on the _____ day
of _____ in the _____ year of the reign of our lady the now Queen
Victoria, in the Court of our said lady the Queen, before the Queen herself at West-
minster, a certain issue was joined in the said Court of our said lady the Queen, be-
fore the Queen herself, in a certain action wherein one A. B. was the plaintiff, and
C. D. and G. H. were defendants: and that afterwards, to wit, at the sitting of
nisi prius, holden for the county of Middlesex, to wit, on the _____ day
of _____ in the _____ year of the reign aforesaid, at Westminster
aforesaid, in the great hall of pleas there, commonly called Westminster Hall, be-
fore the Right Hon. Thomas Lord Denman, then chief justice of our said lady the
Queen, assigned to hold pleas in the said Court of our said lady the Queen, before
the Queen herself, by form of the statute and so forth, the same issue came on to be
tried, and then and there was tried in due form of law by a jury of the said county
of Middlesex, in that behalf duly taken and sworn between the said parties; and
that, upon the trial of the said issue, one G. H., did then appear and was produced as a
witness for and on behalf of the said A. B., and that the said G. H. did then before the
said Thomas Lord Denman, the chief justice aforesaid, take his corporal oath, and was
then and there duly sworn upon the Holy Gospel of God, that the evidence which he
the said G. H. should give to the Court and jury sworn between the parties aforesaid,
touching the matters in question, on the said issue, should be the truth, the whole
truth, and nothing but the truth; and then and there, upon the trial of the said
issue, and for the purpose thereof, it became and was material to ascertain the
truth of the matter hereafter alleged to have been sworn and deposed to by the said
G. H.; and that thereupon the said G. H. being so produced and sworn as afore-
said, devising and wickedly intending to cause and procure a verdict to pass against
the said C. D. and E. F. for the said A. B. on the trial of the said issue, before the
said Thomas Lord Denman, the chief justice aforesaid, falsely, maliciously, wilfully,
wickedly, and corruptly, and by his own proper act and consent, did depose, swear,
and give evidence, amongst other things, to the jurors of the said jury so sworn between
the said parties as aforesaid, in substance and to the effect as follows: that is to say,

(6.) Indictment
for perjury by a
witness on a trial
in Q. B. at West-
minster, at the
sittings in term.

6. Forms.

Conclusion.

that [the said C. D. and E. F. both struck the said A. B. on the 14th January, A.D. 1836]. Whereas, in truth and in fact [the said C. D. and E. F. did not, nor did either of them, strike the said A. B. on the 14th January, A.D. 1836, or at any other time.] And so the jurors first aforesaid, upon their oath aforesaid, do say, that the said G. H., at and upon the said trial of the said issue, and on the said, etc., aforesaid, at the parish of St. Margaret, within the liberty aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, before the said Thomas Lord Denman, the chief justice aforesaid, by his own proper act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did falsely, wickedly, and corruptly, upon his oath aforesaid, commit wilful and corrupt perjury, in contempt of our said lady the Queen and her laws, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

(7.) Indictment
for perjury upon
a trial at the
assizes.

_____ } The jurors for our lady the Queen upon their oath present, that hereto-
to wit. } fore, to wit, at the assizes holden for the county of _____ on the
day of _____, in the _____ year of the reign of our
lady the now Queen Victoria, at _____, in the said county, before Sir
A. B., knight, one of the justices of our said lady the Queen assigned to hold pleas
in the Court of our lady the Queen, before the Queen herself, and Sir A. B., knight,
one of the justices of our said lady the Queen, of the bench at Westminster, justices
of our said lady the Queen, assigned to take the assizes in and for the said county
of _____, a certain issue between one E. F. and one G. H., before then
joined in a cert. in action of [trespass], wherein the said E. F. was plaintiff, and
the said C. D. defendant, came on to be tried in due form of law, and was then
and there tried by a jury of the said county in that behalf duly sworn and taken
between the parties aforesaid: upon which said trial C. D. appeared as a witness
for and on behalf of the said C. D., the defendant in the action aforesaid, and was
duly sworn and took his corporal oath upon the Holy Gospel of God, before the
said Sir A. B., knight, so being such justice as aforesaid, that the evidence which he
the said C. D. should give to the Court there, and to the said jury so sworn as
aforesaid, touching the matter then in question between the said parties, should be
the truth, the whole truth, and nothing but the truth. And the jurors aforesaid,
upon their oath aforesaid, do further present, that at and upon the trial of the said
issue so joined between the said parties as aforesaid, and for the purposes thereof,
it then and there became and was material to ascertain the truth of the matters
hereafter stated to have been sworn and deposed to by the said C. D. And the
jurors first aforesaid, upon their oath aforesaid, do further present, that the said
C. D. being so sworn as aforesaid, contriving and intending to pervert the due
course of law and justice, and unjustly to aggrieve the said E. F., the plaintiff
in the said issue, and to deprive him of the benefit of his suit then in question, and to
subject him to the payment of sundry heavy costs, charges, and expenses, then and
there on the trial of the said issue, upon his oath aforesaid, falsely, corruptly,
knowingly, wilfully, and maliciously, before the said jurors so sworn as aforesaid,
and before the said Sir A. B., knight, so being such justice as aforesaid, did de-
pose and swear in substance and to the effect following, that is to say, that [here
set out the perjured matter sworn to with the necessary innuendoes]: whereas
in truth and in fact, etc. [assign the perjury as usual]. And so the jurors aforesaid,
upon their oath aforesaid, do say, etc. [Conclude as in form No. 6, supra.]

(8.) Indictment
for perjury in
affidavit sworn
in Court in oppo-
sition to a rule to
show cause why
a judgment
should not be set
aside.

Central Criminal Court, } The jurors of our lady the Queen, upon their oath
to wit. } present, that before the making of the affidavit herein-
after mentioned, the goods and chattels of one C. D. had been levied and taken by the
sheriff of the county of M., upon and by virtue of a certain writ of our said lady
the Queen, called a fieri facias, before then sued and prosecuted out of the Court of
our said lady the Queen, before the Queen herself, at W., in the county of M., upon
and by virtue of a certain judgment before then obtained in the said Court, in a
certain action at the suit of A. B. against him the said C. D. in the said Court.
And thereupon, afterwards, on the _____ day of _____ in the
_____ year of the reign of our lady the now Queen Victoria, at W.,
aforesaid, in the county aforesaid, and within the jurisdiction of the said Central

Criminal Court, by a certain rule and order of the said Court of our lady the Queen, before the Queen herself, then and there made, it was ordered that the said A. B., upon notice of the said rule, to be given to his attorney or agent, should show cause to the said Court on

then next, why the judgment signed in the said cause, and the proceedings had thereon, should not be set aside, and that the sheriff of the said county of M. should retain in his hands the money levied by him under the said writ of execution issued in the said cause, until the further order of the said Court. And the jurors aforesaid, on their oath aforesaid, do further present, that E. F., late of the parish of

, in the county of
, labourer, contriving and maliciously intending to aggrieve and injure the said A. B., and to prevent him from obtaining a rule of the said Court of our said lady the Queen, before the Queen herself, in the said cause, for the setting aside the said judgment, and to discharge the said rule so obtained as aforesaid, and to impede and stop the course of public justice, heretofore, to wit, on the
day of *in the* *year of the reign*

aforesaid [date of making the false affidavit], contriving and intending as aforesaid, did come in his the said E. F.'s own proper person into the said Court of our said lady the Queen, before the Queen herself, at Westminster aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, and did then and there produce to the said Court of our lady the Queen herself a certain affidavit in writing of the said E. F., to be exhibited to the said Court, for the purpose of discharging the said rule so made and obtained as aforesaid; and the said E. F. was then and there before the said last-mentioned Court duly sworn, and did take his corporal oath upon the Holy Gospel of God, concerning the truth of the matters contained in the said affidavit (the same Court then and there having a lawful and competent authority to administer the said oath to the said E. F., and to take and receive the said affidavit of the said E. F. in that behalf), and that the said E. F., being so sworn as aforesaid, did then and there, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, and within the jurisdiction of the said last-mentioned Court, in and by his affidavit aforesaid, and by his oath aforesaid, before the said Court, the said Court then and there having such authority to administer the said oath as aforesaid, and to take and receive the said affidavit as aforesaid, falsely, corruptly, knowingly, wilfully, and maliciously did depose and swear, in substance and effect as follows: that is to say, [set out the matter sworn to falsely, with innuendoes, or else merely state the substance; assign also the perjury]. And the jurors aforesaid, on their oath aforesaid, do further say, that on the occasion of the said E. F. so swearing and deposing as aforesaid, it then and there became and was material to ascertain the truth of the matters so sworn and deposed to by him as aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say, etc. [Conclude as usual, as in form No. 6, ante, 1256.]

Averment of
materiality.

Central Criminal Court, } The jurors for our lady the Queen upon their oath pre-
to wit. } sent, that A. B. late of the parish of

in the county of
day of *in the* *year of the reign of our lady the*
now Queen Victoria, at Westminster, in the county of Middlesex, and within the jurisdiction of the said Court, did exhibit his certain bill of complaint in writing, against E. F., in the High Court of Chancery of our said lady the Queen (the same Court then being held at W., in the said county of M.), which said bill was directed to the Right Hon. S. C., Baron of L., in the county palatine of Durham, then High Chancellor of Great Britain; and the said A. B., in and by his said bill of complaint, amongst other things, stated and alleged in substance and to the effect following (that is to say), that, etc. [here set out the matter of the bill to which the false part of the answer has any reference], as in and by the said bill of complaint of the said A. B., amongst other things, will more fully appear. And the jurors aforesaid, on their oath aforesaid, do further present, that the said E. F. afterwards, that is to say, on, etc., at the parish of [St. Andrew, Holborn], in the county of [Middlesex], and within the jurisdiction of the said Central Criminal Court, did come in his own proper person before G. H., Esq., then and there being one of the Masters of the said Court of Chancery, and then and there did produce and exhibit to the said G. H. the answer in writing of the said E. F. to the said bill of complaint of the said A. B., and the said E. F. was then and

(9) Indictment
for perjury in an
answer sworn
before a master
in Chancery.

6. Forms.

there in due manner sworn, and did take his corporal oath upon the Holy Gospel of God, touching and concerning the matters contained in his said answer before the said G. H. (he, the said G. H., so then being such master as aforesaid, and then and there having sufficient and competent power and authority to administer an oath to the said E. F. in that behalf); and that the said E. F., being so sworn as aforesaid, did, upon his corporal oath concerning the matters contained in the said answer before the said G. H., Esq., then, as aforesaid, being one of the said Masters of the said Court of Chancery, then and there swear, that so much of the said answer of the said E. F., so as aforesaid exhibited and produced, as related to his own acts and deeds, was true. And that the said E. F., being so sworn as aforesaid, intending to aggrieve the said A. B., in and by the said answer before the said G. H., Esq., then and there being one of the said Masters of the said Court of Chancery as aforesaid, and having such sufficient and competent authority as aforesaid, falsely, knowingly, wilfully, wickedly, maliciously, and corruptly, by his own act and consent, upon his oath aforesaid, did answer, swear, and affirm, in substance and effect as follows, that is to say, etc. [here set out the substance of the perjured part of the answer], as by the said answer of the said E. F., still remaining in the said Court of Chancery aforesaid, at Westminster aforesaid, in the county aforesaid, amongst other things, will more fully appear. Whereas in truth and in fact [assign the perjury as usual, according to the answer; then add the usual averment of materiality, as *supra* (No. 8), and conclude with the usual conclusion in perjury, from the words, "And so," etc., as *ante*, 1252, No. 2].

(10.) Indictment for perjury in a cause in the ecclesiastical Court.

— (venue) } The jurors for our lady the Queen upon their oath present, that
to wit. } heretofore, to wit, on the day of
in the year of the reign of our lady the now Queen Victoria, C. D.,
late of the parish of , in the county of , labourer,
intending to injure one A. B., came in his own proper person before E. F., then
surrogate of the dean and chapter of R., and did then and there, that is to say,
on the day and year aforesaid, at etc. [venue], as a witness in a certain suit, to
wit, a suit of defamation then depending in the episcopal Court of K., between
the said A. B. against G. H., take his corporal oath upon the Holy Gospel of God,
before the said E. F. (the said E. F. then and there having full power and authority
to administer an oath to the said C. D. in that behalf), and then and there, to wit,
on the day and year aforesaid, at, etc. [venue], aforesaid, by his own act and
consent, upon his said oath before the said E. F. (the said E. F. then and there
having such power and authority to administer the said oath to the said C. D. as
aforesaid), falsely, wilfully, maliciously, and corruptly did say, depose, swear,
and make deposition in writing, in substance and effect as follows, that is to say,
that, etc. [here state the substance of the matter sworn, with proper innuendoes],
as by the said deposition (reference being thereto had), will, amongst other
things, more fully appear. Whereas, in truth and in fact, etc. [assign the per-
jury]. And so the aforesaid jurors, on their aforesaid oath, do say, that the
aforesaid C. D., on the said, etc., at, etc., aforesaid, before the aforesaid E. F.
(then and there having full power and authority to administer the aforesaid oath
to the said C. D., in the respect aforesaid), by and through his own act and con-
sent, in manner and form aforesaid, upon his aforesaid oath, did falsely, mali-
ciously, wilfully, and corruptly commit wilful and corrupt perjury, to the evil
example of all others, to the great damage of the aforesaid A. B., and against the
peace of our said lady the Queen, her crown and dignity.

(11.) Indictment for perjury, upon a complaint before a magistrate.

— (venue) } The jurors for our lady the Queen upon their oath present, that
to wit. } C. D., wickedly and maliciously contriving and intending un-
justly to aggrieve one J. J., and him, the said J. J., to subject to the punishments,
pains, and penalties by the laws of this realm provided for persons guilty of
[felony and larceny] (a), on the day of in the

(a) If not a felony omit this.

year of the reign of our sovereign lady Victoria, came in his own proper person before J. P., Esquire, then and yet being one of the justices of our said lady the Queen, assigned to keep the peace of our said lady the Queen, in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanours committed in the said county, and then before the said J. P., Esq., in due form of law was sworn and took his corporal oath upon the Holy Gospel of God; and that the said C. D., being so sworn as aforesaid, then and there, upon his oath aforesaid, before the said J. P., Esq., upon a certain charge and information [of theft], then and there made before the said J. P., in his said office of justice as aforesaid, falsely, corruptly, knowingly, wilfully, and maliciously, did say, depose, swear, and give information in writing (amongst other things), in substance and to the effect following, that is to say, this informant (meaning the said C. D.) upon his oath, saith [so proceeding to set out the defendant's information upon oath before J. P., with the necessary innuendoes]; whereas in truth and in fact, etc. [assign the perjury as usual, etc., with an averment of materiality; then conclude]. And so the jurors aforesaid, upon their oath aforesaid, do say, etc. [as ante, 1252, No. 2].

Central Criminal Court, } The jurors for our lady the Queen upon their oath pre-
to wit. } sent, that at the sitting at nisi prius, holden after
Michaelmas term, in the year of the reign of our lady the now
Queen Victoria, at Westminster, in and for the county of Middlesex, in the great
hall of pleas there, called Westminster Hall, according to the form of the statute
in such case made and provided, before the Right Hon. Thomas Lord Denman, then
chief justice of our said lady the Queen, assigned to hold pleas in the Court of our
said lady the Queen, before the Queen herself, a certain issue in due manner joined
in the said Court of our said lady the Queen, before the Queen herself, between our
said lady the Queen and one C. D., upon a certain indictment then depending against
him, the said C. D., for wilful and corrupt perjury, came on to be tried, and was
then and there, in due form of law, tried by a certain jury of the country, in due
manner sworn and taken for that purpose, and that at and upon the trial of the
said issue, one E. F., late of the parish of _____, in the county of
_____, labourer, did then and there, to wit, on the _____ day
of _____ in the _____ year of the reign of our lady the now
Queen Victoria, at, etc., in the great hall of pleas there, and within the jurisdiction
of the said Central Criminal Court, appear and was produced as a witness for and
on the behalf of our said lady the Queen, against the said C. D., upon the trial of
the said issue, and the said E. F. was then and there duly sworn, and did then and
there take his corporal oath upon the Holy Gospel of God, as such witness as afore-
said, before the said Thomas Lord Denman, the chief justice aforesaid, that the
evidence which he, the said E. F., should give to the Court and jury sworn between
our said lady the Queen and the said C. D., should be the truth, the whole truth,
and nothing but the truth (the said Thomas Lord Denman, the chief justice afore-
said, then and there having competent authority to administer the said oath to the
said E. F. in that behalf); and the said E. F., being so sworn as aforesaid, it then
and there, upon the trial of the said issue, became and was material to ascertain
the truth of the matters hereafter alleged to have been sworn and deposed to by the
said E. F. And the jurors first aforesaid, upon their oath aforesaid, do further
present, that the said E. F., minding and corruptly and maliciously intending to
injure and aggravate the said C. D., and to cause and procure him to be convicted of
the wilful and corrupt perjury whereof he then stood indicted as aforesaid, and to
subject him to the pains and penalties by the laws of this realm inflicted on persons
guilty of that crime, then and there, to wit, on the trial of the said issue, at the
said sitting of nisi prius so holden as aforesaid, upon his oath aforesaid, before the
said Thomas Lord Denman, the chief justice aforesaid, then and there having such
competent authority to administer the said oath as aforesaid, falsely, wickedly,
maliciously, knowingly, wilfully, and corruptly did say, depose, swear, and give
evidence, amongst other things, in substance and to the effect following, that is to
say, that, etc. [here set out the substance of the false evidence], whereas in
truth and in fact, etc. [here assign the perjury]. And so the jurors first afore-
said, on their oath aforesaid, do say, that the said E. F. then and there, to wit,
at the said sitting of nisi prius holden as aforesaid, on, etc., at Westminster afore-
said, and within the jurisdiction of the said Central Criminal Court, in the great

(12.) Indictment for perjury in giving evidence on trial at Westminster Hall, of an issue on an indictment for perjury.

6. Forms.

hall of pleas there, called Westminster Hall, at and upon the trial of the said issue, in open Court, upon his oath aforesaid, before the said Thomas Lord Denman, the chief justice aforesaid, then and there having such competent power to administer the said oath as aforesaid, in manner and form aforesaid, falsely, etc. [And conclude as usual, ante, 1252 form No. 2.]

(13.) Commitment for subornation of perjury.

(Commencement as usual.) *on the _____ day of _____, A. D., at the parish of _____, in the said county, unlawfully, corruptly, wickedly, and maliciously, did solicit, suborn, and instigate one C. D. to commit wilful and corrupt perjury in the testimony given by the said C. D. as a witness, etc. [as in the form, ante, 1252, No. 1.] And you, the said keeper, etc. [Conclude as usual.]*

(14.) Indictment for subornation of perjury (a).

Central Criminal Court, } The jurors for our lady the Queen upon their oath to wit. } present that C. D. wickedly and maliciously contriving and intending to injure one A. B., then being in the custody of the marshal of the Marshalsea of our said lady the Queen, before the Queen herself, at the suit of one J. J., and to cause the said A. B. to be kept and detained in custody of the said marshal as a prisoner, by and at the suit of the said C. D., for a large sum of money, to wit, the sum of [£35], by issuing and proceeding on a writ of detainer against him, the said A. B., as a prisoner, in such custody as aforesaid, according to the course and practice of the said Court of our said lady the Queen, before the Queen herself, on the [29th] day of June, in the [1st] year of the reign of our sovereign lady the now Queen Victoria, at Westminster, in the county of Middlesex, did falsely, corruptly, knowingly, wilfully, and wickedly solicit, suborn, and procure one H. G. to go into the Court of our said lady the Queen, before the Queen herself, the said Court then and still being holden at Westminster, in the county aforesaid, and to produce to the said Court a certain affidavit in writing of the said H. G., to be exhibited to the said Court, for the purpose last aforesaid, and in and by the said affidavit falsely to swear and depose, to and before the said Court, that the said A. B. was justly and truly indebted unto the said C. D. in the sum of [£35 and upwards, on a bill of exchange drawn by the said A. B. upon and accepted by one P. G., and payable to the order of the said A. B., at a certain day then past, and by the said A. B. indorsed to one J. S., and by the said J. S. indorsed to the said C. D.] And the jurors aforesaid, upon their oath aforesaid, do further present that, in consequence and by the means, encouragement, and effect of the said wicked and corrupt subornation and procurement of the said C. D., he, the said H. G., afterwards, to wit, on the said [29th] day of [June], in the year aforesaid, did go in his proper person into the said Court of our said lady the Queen, before the Queen herself, the said Court then and still being holden at Westminster, in the county aforesaid, and did then and there produce to the said Court the said affidavit in writing of the said H. G., to be exhibited to the said Court for the purpose aforesaid; and the said H. G. then and there was sworn, and took his corporal oath before the said Court, on the Holy Gospel of God; and the said H. G. being so sworn as aforesaid, by the means and in consequence of the said wicked solicitation, subornation, and procurement of the said C. D., for the purpose aforesaid, did then and there, upon his oath aforesaid, before the said Court as aforesaid, falsely, wickedly, wilfully, and corruptly depose and swear in and by the said affidavit in writing, in substance and to the effect following, that is to say, that the said A. B. then was justly and truly indebted unto the said C. D. in the sum of [£35 and upwards on a bill of exchange, drawn by the said A. B. upon and accepted by one B. G., and payable to the order of the said A. B. at a certain day then past, and by the said A. B. indorsed to one J. S., and by the said J. S. indorsed to the said C. D.], whereas in truth and in fact the said A. B. was not, at

(a) It will be seen that this form is framed for an offence committed in an action in which there was a writ of detainer. That mode of proceeding

is now abolished, but the form may be readily made applicable to another case.

the time of making the said affidavit by the said H. G. as aforesaid, indebted to the said C. D. in the sum of [£35 and upwards, in the said affidavit mentioned, on the said bill of exchange drawn by the said A. B. upon and accepted by one B. G., and indorsed to the said J. S., and by him indorsed to the said C. D., or on any other bill of exchange whatever]. And whereas, in truth and in fact, the said A. B. was not, at the time of making the affidavit as aforesaid, or at any other time, indebted to the said C. D. in the said sum of [£35] on any account whatever; and whereas, in truth and in fact, he, the said A. B., did not, at the time of making of the affidavit as aforesaid, owe to the said C. D. the said sum of [£35], or any part thereof, or any other sum of money whatsoever, which he, the said C. D., at the time of soliciting, suborning, and procuring the said H. G. wilfully, corruptly, and falsely to swear, as aforesaid, well knew, to wit, at Westminster aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D., on the 29th day of June aforesaid, at Westminster aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, did falsely, corruptly, knowingly, wilfully, and wickedly suborn and procure the said H. G. to commit wilful and corrupt perjury, in and by his oath aforesaid, taken in the open Court of our said lady the Queen, before the Queen herself, the same Court then and there having lawful and competent authority to administer such oath to the said H. G. in that behalf, in contempt of our said lady the Queen and her laws, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

Petroleum.

The 25 & 26 Vict. c. 66, after reciting that it is expedient to provide for the safe keeping of petroleum and certain products thereof that are dangerous to life and property, from their properties of giving off inflammable vapours at low temperatures, enacts in sect. 1 that,—

- | | |
|--|-------------------------------|
| "Petroleum," for the purposes of this Act, shall include any product thereof that gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer : | Definitions :
"Petroleum;" |
| "Borough" shall in England mean any place for the time being subject to the provisions of the 5 & 6 Will. 4, c. 76 : | "Borough;" |
| "Harbour" shall include any port, dock, navigable river, pier, or other works in or at which vessels ship or discharge goods or passengers : | "Harbour;" |
| "Harbour authority" shall include all persons or bodies of persons, corporate or unincorporate, being proprietors of or entrusted with the duty of improving, maintaining, or managing any harbour : | "Harbour authority." |

Sect. 2. Every vessel carrying a cargo consisting wholly or in part of petroleum on entering any harbour within the United Kingdom shall conform to such regulations in respect to the place at which she is to be moored as may from time to time be issued by the harbour authority having jurisdiction over such harbour. If any vessel is moored in any place in contravention of such regulations, the owner or master of such vessel shall incur a penalty not exceeding £20 for each day during which the vessel remains moored, and it shall be lawful for the harbour master, or any other person acting under the orders of the harbour authority, to cause such vessel to be removed, at the expense of the owner thereof, to such place as may be in conformity with the said regulations, and all expenses incurred in such removal may be recovered in the same manner in which penalties are hereby made recoverable.

Regulations to be observed by a ship carrying petroleum.

Petroleum.

Sect. 3 is repealed by the 31 & 32 Vict. c. 56, s. 4, *post*, 1264.

Definition of
local authority.

Sect. 4. The following bodies shall respectively be the local authority to grant licences under this Act in the districts hereinafter mentioned (that is to say),—

1. In the City of London, except as hereinafter mentioned, the Court of lord mayor and aldermen of the said city :
2. In the metropolis, as defined by the Act of the session of the eighteenth and nineteenth years of the reign of her present Majesty, chapter one hundred and twenty, except the City of London, and except as hereinafter mentioned, the metropolitan board of works :
3. In any borough in England or Ireland, except as hereinafter mentioned, the mayor, aldermen, and burgesses, by the council :
4. In any place in England or Ireland, except as hereinafter mentioned, within the jurisdiction of any trustees or improvement commissioners, appointed under the provisions of any local or general Act of Parliament, the trustees or commissioners :
5. In any burgh or place in Scotland, except as hereinafter mentioned, within the jurisdiction of any town council, and not subject to the jurisdiction of police commissioners or trustees, the town council ; but in any burgh or place in Scotland, except as hereinafter mentioned, within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, the police commissioners or trustees.
6. In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority hereinbefore mentioned, the harbour authority, to the exclusion of any other local authority :
7. In any place in England or Ireland in which there is, no local authority as hereinbefore defined, the justices in petty sessions assembled, and in Scotland any two justices of the peace for the county.

Mode of granting
licences.

Sect. 5. Licences in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licences, if any, granted by such authority are executed ; they may be granted for a limited time, and there may be annexed thereto any conditions as to renewal or otherwise which the local authority thinks necessary for diminishing the risk of damage from explosion or fire ; and any licensee violating any of the conditions of his licence shall be deemed to be an unlicensed person.

In case of refusal
of licence, the
applicant may
memorialize
secretary of
state.

Sect. 6. If, on any application for a licence under this Act, the local authority refuses the licence, or grants the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, certify in writing under the hand or hands of one or more of the persons constituting the local authority the grounds on which it refused the licence or annexed conditions to the grant thereof, and shall deliver the certificate to the applicant, who may thereupon, within ten days from the time of the delivery thereof, transmit the same to one of her Majesty's principal secretaries of state, if the application is for a licence in England or Scotland, and to the lord lieutenant or other chief governor if the application is for a licence in Ireland, together with a memorial, praying that, notwithstanding such refusal, the licence may be granted, or that such conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial ; and it shall be lawful for the secretary of state, lord lieutenant, or other chief governor, if he think fit, on consideration

of such memorial and certificate, and if he think it necessary or desirable, after due inquiry from and a report by such person as he may appoint for that purpose, to grant the licence prayed for, either absolutely, or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority; and the licence so granted, or altered and modified, as the case may be, when certified under the hand of the said secretary of state, lord lieutenant, or other chief governor, shall be to all intents as valid as if granted by the local authority.

Petroleum.

Sect. 7. Any forfeiture or penalty for an offence against this Act may be enforced in England and Ireland upon summary conviction before any two justices; and one moiety of the forfeiture and penalty shall belong to her Majesty, and the other moiety to the informer, unless the informer is a servant of the person informed against, in which case the moiety of the forfeiture or penalty which would otherwise belong to the informer shall be applied in such manner and to such other purposes as the justices in their or his discretion may think fit.

Forfeitures and penalties in England and Ireland.

Sect. 8. Any forfeiture or penalty for an offence against this Act may be enforced in Scotland upon summary conviction, at the instance of the procurator fiscal, before any sheriff, or before any two justices of the county, or before the magistrates or any police magistrate of the burgh in which the offence was committed, who may sentence the offender to imprisonment until such forfeiture or penalty and the expenses of conviction are paid, for a period not exceeding three months; and one moiety of such forfeiture or penalty shall belong to her Majesty, and the other moiety shall be applied in such manner and to such purposes as such sheriff, justices, magistrates, or magistrate in their or his discretion may think fit.

Recovery of forfeitures and penalties in Scotland.

Sect. 9. Petroleum may be searched for in the same manner, under the same warrants, and subject to the same conditions in, under, and subject to which gunpowder may be searched for, in pursuance of the Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and thirty-nine; and all the provisions of the said Act relating to searching for gunpowder shall be incorporated with this Act, and be construed as if the word "gunpowder" in such provisions included petroleum as defined by this Act, and as if the Act therein referred to were this Act.

Search for petroleum.

Sect. 10. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament, law, or custom, and the local authority may exercise such other powers in the same manner as if this Act had not passed; and nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance.

Reservation of previous powers with respect to inflammable substances.

By the 31 & 32 Vict. c. 66, it is enacted as follows:—

Sect. 1. This Act may be cited for all purposes as "The Petroleum Act, 1868."

Short title.

Sect. 2. This Act, so far as is consistent with the tenor thereof, shall be read as one with the 25 & 26 Vict. c. 66, and the said Act may be cited for all purposes as "The Petroleum Act, 1862," and this Act and the said Act may be cited together as "The Petroleum Acts, 1862, 1868."

Act to be construed with 25 & 26 Vict. c. 66.

Sect. 3. For the purposes of "The Petroleum Acts, 1862, 1868," including all local Acts and bye-laws relating to petroleum or the produce thereof, "petroleum" shall include all such rock oil, Rangoon oil, Burmah oil, any product of them, and any oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any product

Definition of "petroleum."

Petroleum.

of them, as gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer.

Sect. 3 of 25 & 26
Vict. c. 66 re-
pealed.

Sect. 4. From and after the 1st day of February, 1869, the third section of "The Petroleum Act, 1862," shall be repealed; provided that such repeal shall not affect any liability or penalty incurred in respect of any offence committed before the passing of this Act, or of any legal remedy for enforcing or recovering such liability or penalty.

Regulations as to
storage of petro-
leum.

From and after the 1st day of February, 1869, no petroleum shall be kept, otherwise than for private use, within fifty yards of a dwelling-house or of a building in which goods are stored, except in pursuance of a licence given in accordance with the "The Petroleum Act, 1862."

There may be annexed to any such licence such conditions as to the mode of storage, as to the nature of the goods with which petroleum may be stored, as to the testing such petroleum from time to time, and generally as to the safe keeping of petroleum, as may seem expedient to the local authority.

Any petroleum kept in contravention of this section shall be forfeited, and in addition thereto the occupier of the place in which such petroleum is kept shall be liable to a penalty not exceeding £20 a day for each day during which petroleum is kept in contravention of "The Petroleum Acts, 1862 and 1868," or either of such Acts.

Prohibition of
sale of petroleum
for purpose of
illumination.

Sect. 5. No person shall sell or expose for sale for use within the United Kingdom any description of petroleum from and after the 1st day of February, 1869, which gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer, unless the bottle or vessel containing such petroleum have attached thereto a label in legible characters stating as follows: "Great care must be taken in bringing any light near to the contents of this vessel, as they give off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer." Any person acting in contravention of this section shall for each offence be subject to a penalty not exceeding £5.

Inspector of
weights, etc.,
may test petro-
leum.

Sect. 6. It shall be lawful for any inspector of weights and measures, or other person or persons duly appointed to inspect weights and measures under the 22 & 23 Vict. c. 56, and the Acts therein recited, at all reasonable times to inspect and test all petroleum kept, offered, or exposed for sale; and if upon such inspection and test any description of petroleum shall be found kept or offered or exposed for sale as aforesaid contrary to the provisions of this Act or of "The Petroleum Act, 1862," the same shall be liable to be seized and, upon conviction, forfeited, and such person so examining the same shall retain a sample thereof, and the person or persons so offending shall be liable for any such offence to any penalty not exceeding £5: Provided always, that if the person or persons in whose possession such petroleum shall be found as aforesaid shall claim to have a further test made on their behalf, the magistrate before whom complaint of the said offence may be laid shall call before him the public analyst provided by the second section of the 23 & 24 Vict. c. 84, or, if no such analyst has been provided, some other person having competent chemical knowledge, who shall test a portion of the sample so retained as aforesaid in the manner hereinafter provided, and shall give evidence of the result of such test; and the magistrate shall direct payment to be made to the analyst of a sum not less than 2s. 6d. nor more than 10s. 6d.; and in case of conviction the person convicted shall pay the cost of such analysis, and in case of acquittal such cost shall be paid in the manner provided for the payment of expenses by section twelve of the 23 & 24 Vict. c. 84.

Trial of offences
under "Petro-

Sect. 7. All offences under "The Petroleum Acts, 1862, 1868," may

be tried as police offences by any magistrate acting under any general or local police Act, and all forfeitures and penalties incurred under "The Petroleum Acts, 1862, 1868," may be disposed of, recovered, and applied in the manner authorized by such general or local police Act.

Piracy.

leum Acts, 1862 and 1868."

Sect. 8. The temperature at which petroleum gives off an inflammable vapour shall, for the purposes of the petroleum Acts, be tested in manner set forth in the schedule hereto.

Mode of testing petroleum.

SCHEDULE.

Directions for applying the Flashing Test to Samples of Petroleum Oil.

The vessel which is to hold the oil shall be of thin sheet iron; it shall be two inches deep and two inches wide at the opening, tapering slightly towards the bottom; it shall have a flat rim, with a raised edge one quarter of an inch high round the top; it shall be supported by this rim in a tin vessel four inches and a half deep and four and a half inches in diameter; it shall also have a thin wire stretched across the opening, which wire shall be so fixed to the edge of the vessel that it shall be a quarter of an inch above the surface of the flat rim. The thermometer to be used shall have a round bulb about half an inch in diameter, and is to be graduated upon the scale of Fahrenheit, every ten degrees occupying not less than half an inch upon the scale.

The inner vessel shall be filled with the petroleum to be tested, but care must be taken that the liquid does not cover the flat rim. The outer vessel shall be filled with cold, or nearly cold, water; a small flame shall be applied to the bottom of the outer vessel, and the thermometer shall be inserted into the oil so that the bulb shall be immersed about one and a half inches beneath the surface. A screen of pasteboard or wood shall be placed round the apparatus, and shall be of such dimensions as to surround it about two-thirds, and to reach several inches above the level of the vessels.

When heat has been applied to the water until the thermometer has risen to about 90° Fahrenheit, a very small flame shall be quickly passed across the surface of the oil on a level with the wire. If no pale blue flicker or flash is produced, the application of the flame is to be repeated for every rise of two or three degrees in the thermometer. When the flashing-point has been noted, the test shall be repeated with a fresh sample of the oil, using cold, or nearly cold, water as before; withdrawing the source of heat from the outer vessel when the temperature approaches that noted in the first experiment, and applying the flame test at every rise of two degrees in the thermometer.

Piracy.

[11 & 12 Will. 3, c. 7; 8 Geo. 1, c. 24; 2 Geo. 2, c. 28; 18 Geo. 2, c. 30; 5 Geo. 4, c. 113; 7 Will. 4 & 1 Vict. c. 88; 5 & 6 Vict. c. 38, s. 1.]

At common law, the offence of piracy consists in committing those acts of robbery and depredation upon the high seas, which, if committed on land, would have amounted to felony there.

At common law;

But it is not a felony triable by jury at common law, and it was only punishable by the civil law before the 28 Hen. 8, c. 15; and even this statute does not make it a felony. (See 1 Russ. 4th ed., by Greaves, 144; 1 Hawk. P. C. 37, s. 4.)

Where several mariners on board a ship lying near the Groyne seized the captain, he not agreeing with them, and, having put him on shore, carried away the ship, and afterwards committed several piracies, the force upon the captain, and the carrying away the ship, which was ex-

Piracy.

plained by the use of it afterwards, was adjudged piracy. (*R. v. May and Others*, 2 *East*, P. C. 796; 1 *Russ.* 147.) But in a subsequent case, where the master of a vessel loaded goods on board at Rotterdam consigned to Malaga, which he caused to be insured; and after he had run the goods on shore in England the ship was burned, when he protested both the ship and cargo as burned with intent to defraud the owner and insurers; the judges of the common law, who assisted the judges of the Admiralty, directed an acquittal upon an indictment for piracy and stealing the goods; because, being only a breach of trust and no felony, it could not be piracy to convert the goods in a fraudulent manner until the special trust was determined. (*Mason's case*, 8 *Mod.* 74; 2 *East*, P. C. c. 17, s. 3, 796, S. C.)

If persons at sea force the captain of a vessel to sell part of his cargo for less than its value, it is piracy. (*Kinloch v. Craig*, 3 *T. R.* 783. See 28 *Hen.* 8, c. 15, s. 4.) But if a pirate attack a vessel, and before he obtains possession of her the captain, in order to redeem her, give an oath to pay a sum certain, this is no piracy, for there was no taking. (*Molloy*, 64, s. 18.) But if there be an actual taking it is piracy, although the pirate afterwards allow the party to proceed on his voyage. (1 *Sir L. Jenk.* 98.)

If a party making a capture at sea do so by the authority of any prince or state, it cannot be considered piracy, for a nation never can be deemed pirates: fixed domain, public revenue, and a certain form of government exempt a people from that character. Even a capture by authority of the states of Algiers, Tunis, or Tripoli cannot be treated as piracy. (2 *Sir L. Jenk.* 790; *Grot.* 2, c. 18, s. 2; but see now 11 & 12 *Will.* 3, c. 7, *infra*, and 18 *Geo.* 2, c. 30, s. 1, *post*, 1268.)

If the subjects of the same state commit robbery upon each other upon the high sea, it is piracy. If the subjects of different states commit robbery upon each other upon the high sea, if their respective states be in amity, it is piracy; if at enmity, it is not; for it is a general rule that enemies never can commit piracy on each other, their depredations being deemed mere acts of hostility. (1 *Sir L. Jenk.* 94; 4 *Inst.* 154; see *R. v. Sawyer, R. & R.* 294.)

By statute.

A variety of offences have been made piracies by different statutes.

King's subjects, etc., committing piracy on others of king's subjects by commission from a foreign prince, shall be adjudged pirates, etc.

Thus the 11 & 12 *Will.* 3, c. 7, s. 8 (made perpetual by the 6 *Geo.* 1, c. 19), enacts, that, if any of his Majesty's natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility, against others his Majesty's subjects, upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever, such offender and offenders, and every of them, shall be deemed, adjudged, and taken to be pirates, felons, and robbers. (And see 18 *Geo.* 2, c. 30, *post*, 1268.)

Commander or mariner, who shall betray his trust, or turn pirate, etc,

Sect. 9. If any commander or master of any ship, or any seaman or mariner, shall, in any place where the admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships, or any barge, boat, ordnance, ammunition, goods, or merchandises, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt or endeavour to corrupt, any commander, master, officer, or mariner, to yield up or run away with any ship, goods, or merchandises, or turn pirate, or go over to pirates; or make or endeavour to make a revolt in the ship, (he) shall be adjudged, deemed, and taken to be a pirate, felon, and robber.

It has been decided that making, or endeavouring to make a revolt, with a view to procure a redress of grievances, and without any intent to run away with the ship, or to commit any act of piracy, is an offence

within the ninth section of this statute. (*R. v. Hastings, R. & M. C. C. 82; Reg. v. M'Gregor, 1 Car. & K. 429*). A revolt and imprisonment of a captain can only be justified by a reasonable belief that otherwise the captain will kill or inflict grievous bodily harm on some of the crew. (*Reg. v. Rose, 2 Cox, C. C. 329*.)

An offence under this section can only be committed when the relationship of commander and mariner exists. Where, therefore, the seamen had been shipped under an illegal agreement, it was held that they were not punishable for a revolt under this section. (*Reg. v. Smith, 3 Cox, C. C. 443*.)

Sect. 10, reciting that several evil-disposed persons, in the plantations and elsewhere, have contributed very much towards the increase and encouragement of pirates, by setting them forth, and by aiding, abetting, receiving, and concealing them and their goods, and there being some defects in the laws for bringing such evil-disposed persons to condign punishment; enacts, that all and every person and persons whatsoever, who, after the 29th day of September, in the year of our Lord 1700, shall, either on the land or upon the seas, knowingly or wittingly set forth any pirate, or aid and assist, or maintain, procure, command, counsel, or advise any person or persons whatsoever, to do or commit any piracies or robberies upon the seas, and such person and persons shall thereupon do or commit any such piracy or robbery, then all and every such person or persons whatsoever, so as aforesaid setting forth any pirate, or aiding, assisting, maintaining, procuring, commanding, counselling, or advising the same, either on the land or upon the sea, shall be and are hereby declared, and shall be deemed and adjudged to be, accessory to such piracy and robbery done and committed; and further, that after any piracy or robbery is or shall be committed by any pirate or robber whatsoever, every person and persons, who, knowing that such pirate or robber has done or committed such piracy and robbery, shall, on the land or upon the sea, receive, entertain, or conceal any such pirate or robber, or receive or take into his custody any ship, vessel, goods, or chattels, which have been by any such pirate or robber piratically and feloniously taken, shall be, and are hereby likewise declared, deemed, and adjudged to be accessory to such piracy and robbery; and that, after the said 29th day of September, all such accessories to such piracies and robberies shall and may be inquired of, tried, heard, determined, and adjudged, after the common course of the laws of this land, according to the said statute made in the twenty-eighth year of king Henry the eighth, as the principals of such piracies and robberies may and ought to be, and no otherwise. But accessories are, by the 8 Geo. 1, c. 24, *post*, 1268, declared to be principals, and are to be tried accordingly.

Persons setting forth, or aiding or assisting any pirate, etc.,

shall be adjudged accessories;

the like for concealing pirates, etc.

How accessories shall be tried.

Sect. 12. And for the better and more effectual prevention of combinations and confederacies for the running away with or destroying of any ship, goods, or merchandises, be it further enacted by the authority aforesaid, that a reward of £10 for every ship or vessel of one hundred tons or under, and £15 for every ship or vessel of a greater burden, shall be paid by the captain, commander, or master of every ship or vessel, wherein any such combination or confederacy shall be set on foot for the running away with or destroying any such ship, or the goods and merchandises therein laden, to such person as shall first make a discovery thereof, upon due proof of such combination or confederacy; the same to be paid at the port where the wages of the seamen of the said ship are or ought to be paid, after such discovery and proof made.

Reward to discover any combination for running away with ship, etc.

and how to be paid.

Sect. 16. How commissions to the cinque ports shall be directed. (See "*Admiralty*," Vol. I.)

Sect. 17. For the prevention of seamen deserting of merchant ships abroad, in parts beyond the seas, which is the chief occasion of their turning pirates, and of great detriment to trade and navigation in gene-

Seamen deserting merchant ships to lose their wages.

Piracy.

Trading with pirates, furnishing them with stores, corresponding with them, etc.

Forcibly boarding any merchant ship, and throwing any goods overboard.

Persons declared accessories to piracy, by 11 & 12 Will. 3, c. 7, shall be deemed principals. See the 24 & 25 Vict. c. 94, s. 9.

Forfeiture of wages.

18 Geo. 2, c. 30. Subjects or denizens, during any wars, committing hostilities at sea, against his Majesty's subjects, where the admirals have power, or giving aid, etc., to enemies at sea, may be tried as pirates.

Not to be tried again for the same crime as high treason.

ral, it is enacted, that all such seamen, officers, or sailors, who shall desert the ships or vessels wherein they are hired to serve for that voyage, shall for such offence forfeit all such wages as shall be then due to him or them.

By the 8 Geo. 1, c. 24 (made perpetual by 2 Geo. 2, c. 28), s. 1, if any commander or master of any ship or vessel, or any other person or persons, shall anywise trade with any pirate, by truck, barter, exchange, or in any other manner, or shall furnish any pirate, felon, or robber upon the seas, with any ammunition, provision or stores of any kind, or shall fit out any ship or vessel knowingly, and with a design to trade with, or supply or correspond with any pirate, felon, or robber upon the seas; or if any person or persons shall anyways consult, combine, confederate, or correspond with any pirate, felon, or robber on the seas, knowing him to be guilty of any such piracy, felony, or robbery, such offender and offenders, and every of them, shall in each and every of the said cases be deemed, adjudged, and taken to be guilty of piracy, felony, and robbery, and he and they shall and may be inquired of, tried, heard, and adjudged of and for all or any the matters aforesaid, according to the 28 Hen. 8, (c. 15), and the 11 & 12 Will. 3 (c. 7); and in case any person or persons belonging to any ship or vessel whatsoever, upon meeting any merchant ship or vessel on the high seas, or in any port, haven, or creek whatsoever, shall forcibly board or enter into such ship or vessel, and though they do not seize and carry off such ship or vessel, shall throw overboard or destroy any part of the goods or merchandises belonging to such ship or vessel, the person or persons who shall be guilty thereof, shall in all respects be deemed and punished as pirates as aforesaid.

Sect. 3. That all and every person and persons whatsoever, who, by the said statute made in the eleventh and twelfth years of the reign of king William the third, are declared to be accessory or accessories to any piracy or robbery therein mentioned, are hereby declared, and shall be deemed and taken, to be principal pirates, felons, and robbers, and shall and may, from and after the said 25th day of March, 1722, be inquired of, heard, determined, and adjudged, in the same manner as persons guilty of piracy and robbery may and ought to be inquired of, tried, heard, determined, and adjudged by the said statute made in the eleventh and twelfth years of his late Majesty king William.

Sect. 6. Masters or seamen, not defending themselves against pirates, or who shall utter any discouraging words, shall, if the ship be taken, forfeit their wages to the owners, and suffer six months' imprisonment.

By the 18 Geo. 2, c. 30, s. 1, it is enacted, that all persons, being natural-born subjects, or denizens of his Majesty, who, during the present or any future wars, have committed, or shall commit, any hostilities upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, against his Majesty's subjects, by virtue or under colour of any commission from any of his Majesty's enemies, or have been or shall be any other ways adherent, or giving aid or comfort to his Majesty's enemies upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, may be tried as pirates, felons, and robbers in the said Court of admiralty, on shipboard, or upon the land, in the same manner as persons guilty of piracy, felony, and robbery, are by the said Act (a) directed to be tried.

Sect. 2. Any person who shall be tried and acquitted, or convicted, according to this Act, for any of the said crimes, shall not be liable to be

(a) The 11 & 12 Will. 3, c. 7, *ante*, 1266.

indicted, prosecuted, or tried again in Great Britain, or elsewhere, for the same crime or fact, as high treason.

Piracy.

Sect. 3. Nothing in this Act contained shall be construed to extend to prevent any persons guilty of any of the said crimes, who shall not be tried according to this Act, from being tried for high treason within this realm, according to the aforesaid Act of the twenty-eighth year of king Henry the eighth.

Criminals not tried by this Act, may be tried for high treason by 28 Hen. 8, c. 5.

By 5 Geo. 4, c. 113, s. 9, if any subject or subjects of his Majesty, or any person or persons residing or being within any of the dominions, forts, settlements, factories, or territories, now or hereafter belonging to his Majesty, or being in his Majesty's occupation or possession, or under the government of the united company of merchants of England, trading to the East Indies, shall, except in such cases as are in and by this Act permitted (*a*), after the 1st day of January, 1825, upon the high seas, or in any haven, river, creek, or place, where the admiral has jurisdiction, knowingly and wilfully carry away, convey, or remove, or aid or assist in carrying away, conveying, or removing, any person or persons as a slave or slaves, or for the purpose of his, her, or their being imported or brought as a slave or slaves into any island, colony, country, territory, or place whatsoever, or for the purpose of his, her, or their being sold, transferred, used, or dealt with as a slave or slaves, or shall, after the said 1st day of January, 1825, except in such cases as are in and by this Act permitted, upon the high seas, or within the jurisdiction aforesaid, knowingly and wilfully ship, embark, receive, detain, or confine, or assist in shipping, embarking, receiving, detaining, or confining on board any ship, vessel, or boat, any person or persons for the purpose of his, her, or their being carried away, conveyed or removed, as a slave or slaves, or for the purpose of his, her, or their being imported or brought as a slave or slaves into any island, colony, country, territory, or place whatsoever, or for the purpose of his, her, or their being sold, transferred, used, or dealt with as a slave or slaves, then, and in every such case, the person or persons so offending shall be deemed and adjudged guilty of piracy, felony, and robbery. [But the punishment of death is now abolished by the 1 Vict. c. 91, s. 1, and transportation for life or for any term not exceeding fifteen years, or imprisonment for any term not exceeding three years substituted for it. And see now the Penal Servitude Acts, *ante*, 1214, by which penal servitude is substituted for transportation. Where imprisonment is awarded, it is enacted, by the 1 Vict. c. 91, s. 2, that it shall be lawful for the Court to direct such imprisonment to be with or without hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.] (See tit. "*Slave-trade*," Vol. V.)

Dealing in slaves on high seas, etc. to be deemed piracy.

The 7 Will. 4 & 1 Vict. c. 88, s. 1, repeals so much of the statutes 28 Hen. 8, c. 15; 11 & 12 Will. 3, c. 7; 4 Geo. 1, c. 11; 8 Geo. 1, c. 24; and 18 Geo. 2, c. 30, as relates to the punishment of the crime of piracy, or of any offence by any of the said Acts declared to be piracy, or of accessories thereto respectively.

Punishment for piracy.

Sect. 2. That whosoever, with intent to commit, or at the time of, or immediately before, or immediately after committing the crime of piracy in respect of any ship or vessel, shall assault, with intent to murder, any person being on board of or belonging to such ship or vessel, or shall stab, cut, or wound any such person, or unlawfully do any act by which

When murder intended.

(a) These excepted cases were repealed by the 3 & 4 Will. 4, c. 73, s. 12.

Players and Playhouses.

[2 & 3 Vict. c. 47, s. 46; 6 & 7 Vict. c. 68.]

If we go back to a very ancient period in the history of the country, we shall find no trace of players existing: as we advance further in point of time, we ascertain from Acts of Parliament, and other documents, that exhibitions of the stage did then take place under the protection, in some instances, of the king and nobles, sometimes in religious houses, and sometimes in towns, and other places, with the sanction of the governing local authorities. In the time of Elizabeth, players were declared by statute to be rogues and vagabonds, unless acting as the servants of some baron, or person of higher degree. The statute of 12 Anne, s. 2, c. 23, classed all common players of interludes among rogues and vagabonds, but this was explained by the 10 Geo. 2, c. 28, and finally repealed by the 5 Geo. 4, c. 83, the Act relating to vagrants.

Ancient laws
as to.

General matters
as to.

Playhouses may become nuisances, like any other disorderly house. (See *Bac. Ab. tit. Nuisances (a)*; 1 *Hawk. c. 75, s. 7.*) And it seems that all common stages for rope dancers are nuisances, not only because they are great temptations to idleness, but because they are apt to draw together numbers of disorderly persons which cannot but be very inconvenient to the neighbourhood. (*Id.*, and see *Vin. Ab. Riots, etc. (A.) 8.*)

May be a nuisance.

It seems that players may be prosecuted as guilty of a nuisance in acting obscene plays. (*R. v. Curl, 2 Stra. 790.*)

Obscene plays.

It has been laid down, that though the audience at a theatre have a right to express their disapprobation of any performance or performer exciting their displeasure at the moment, yet if a number of persons go thither *with an intention to make a disturbance*, and render the performance inaudible, though they offer no actual violence to the house, or any person there, yet they will be guilty of a riot, or a rout. (*Clifford v. Brandon, 2 Camp. 358*; and see, as to when parties may be indicted for a conspiracy to hiss a play, tit. "*Conspiracy*," Vol. I.)

Riot.

Conspiracy to
hiss a play.

The public who go to a theatre have a right to express their free and unbiassed opinions of the merits of the performers who appear upon the stage, but parties have no right to go to a theatre by a preconcerted plan to make such a noise that an actor, without any judgment being formed of his performance, should be driven from the stage, and, if two persons are shown to have laid a preconcerted plan to deprive a person who comes out as an actor of the benefits which he expected to result from his appearance on the stage, they are liable in an action for a conspiracy. (*Gregory v. Brunswick (Duke), 1 C. & K. 24, Tindal. See S. C. 6 M. & G. 205, 1 D. & L. 518, 6 Scott, N. R. 809, 8 Jur. 148, 13 L. J. C. P. 34, 3 C. B. 48, 16 L. J. C. P. 35.*)

If a person be told on entering a theatre that there is room, when in fact there is not, his proper course is to leave the theatre and demand the return of his money. He is not justified in getting into a private box or other part of the theatre, for the use of which he has not expressly paid; and if he does he is a trespasser, and the proprietor or his servants may remove him, using no more force than is necessary, and he cannot be imprisoned for such an act; if, however, he commit a breach of the peace by striking any one in the presence of a constable, such constable may arrest him (*Lewis v. Arnold, 4 C. & P. 354*); and if any other person be assisting in, or promoting such breach of the peace, he may also be arrested by the constable. (*Id.* See tit. "*Arrest*," Vol. I.)

Removing parties guilty of
breach of peace.

Players and Playhouses.

Regulations of, by statute.

All theatres for the performance of plays must be licensed.

Penalty for keeping an unlicensed theatre.

Players and playhouses were put under many salutary regulations by the statutes of 3 Jac. 1, c. 21, 10 Geo. 2, c. 19, 10 Geo. 2, c. 28, and the 28 Geo. 3, c. 30, all of which, however, are repealed by the 6 & 7 Vict. c. 68, the statute now in force, which provides, by sect. 2, that it shall not be lawful for any person to have or keep any house or other place of public resort in Great Britain, for the public performance of stage plays (as to the meaning of which see sect. 23, *post*, 1277), without authority by virtue of letters patent from her Majesty, her heirs and successors, or predecessors, or without licence from the lord chamberlain of her Majesty's household for the time being, or from the justices of the peace as hereinafter provided; and every person who shall offend against this enactment shall be liable to forfeit such sum as shall be awarded by the Court in which or the justices by whom he shall be convicted, not exceeding £20 for every day on which such house or place shall have been so kept open by him for the purpose aforesaid, without legal authority.

A booth theatre which is taken to pieces and carried from place to place for theatrical performances, is not a "house or other place of public resort for the public performance of stage plays" within the meaning of this section. (*Davys v. Douglas*, 4 H. & N. 180; 28 L. J., *Exch.* 193.)

But a person hiring an unlicensed room for six nights, and publicly playing stage plays in it, cannot be convicted under this section for "having and holding" a place of public resort for the public performance of stage plays without a licence. (*Reg. v. Strugnell*, L. R. 1 Q. B. 93; 7 B. & S. 124.) He is liable, however, to be convicted under sect. 11. (*Ib.*)

The plaintiff was convicted under sect. 2 of the 6 & 7 Vict. c. 68, and fined £5, he was then ordered to be detained in custody, and a warrant of distress, reciting that he had been adjudged to pay a penalty of £5 and 12s. costs, was issued to levy the amount. Under this warrant the plaintiff's goods were seized on the same day, and he was discharged out of custody on the following morning, and within a few days his goods were sold to satisfy the penalty and costs. The conviction was quashed on appeal. In trespass against the convicting justices: held by *Coleridge* and *Wightman*, JJ., that, assuming they had power, under sect. 1 of the 5 Geo. 4, c. 18, to detain the plaintiff until it was ascertained whether he had goods to satisfy the distress, the order for the detention of the plaintiff was made without jurisdiction, being indefinite as to time and object. (*Leary v. Patrick*, 15 Q. B. 266; 4 New Sess. Cas. 258; 19 L. J., *M. C.* 211.)

Held, by the Court, that assuming that costs could be awarded in addition to the penalty, the warrant of distress was issued without jurisdiction, notwithstanding sect. 19 of the 6 & 7 Vict. c. 68, because the conviction was silent as to costs. (*Ib.*)

Held, by Lord *Campbell*, C.J., and *Patteson*, J., that the warrant of distress being illegal, the imprisonment which was founded upon it was without jurisdiction. (*Ib.*)

Held, by the Court, that the justices having exceeded their jurisdiction, and the conviction having been quashed, the case was within sect. 2 of the 11 & 12 Vict. c. 44, and therefore trespass was the proper form of action. (*Ib.*)

Sect. 3 enacts, that the authority of the lord chamberlain for granting licences shall extend to all theatres (not being patent theatres) within the parliamentary boundaries of the cities of London and Westminster, and of the boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth, and Southwark, and also within those places where her Majesty, her heirs, and successors, shall, in their royal persons, occasionally reside: Provided always, that, except within the cities and boroughs aforesaid, and the boroughs of New Windsor in the county of

What licences shall be granted by the lord chamberlain.

Berks, and Brighthelmstone in the county of Sussex, licences for theatres may be granted by the justices as hereinafter provided, in those places in which her Majesty, her heirs and successors, shall occasionally reside; but such licences shall not be in force during the residence there of her Majesty, her heirs and successors; and during such residence it shall not be lawful to open such theatres as last aforesaid (not being patent theatres) without the licence of the lord chamberlain.

Sec. 4. That for every such licence granted by the lord chamberlain, a fee, not exceeding 10s. for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the lord chamberlain, shall be paid to the lord chamberlain.

Fee for lord chamberlain's licence.

Sec. 5. That the justices of the peace within every county, riding, division, liberty, cinque port, city, and borough in Great Britain beyond the limits of the authority of the lord chamberlain, in which application shall have been made to them for any such licence as is hereinafter mentioned, shall, within twenty-one days next after such application shall have been made to them in writing signed by the party making the same, and countersigned by at least two justices acting in and for the division within which the property proposed to be licensed shall be situate, and delivered to the clerk to the said justices, hold a special session in the division, district, or place for which they usually act, for granting licences to houses for the performance of stage plays, of the holding of which session seven days' notice shall be given by their clerk to each of the justices acting within such division, district, or place; and every such licence shall be given under the hands and seals of four or more of the justices assembled at such special session, and shall be signed and sealed in open Court, and afterwards shall be publicly read by the clerk, with the names of the justices subscribing the same.

Licences may be granted by justices.

Sec. 6. That for every such licence granted by the justices, a fee, not exceeding 5s. for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the justices, shall be paid to the clerk of the said justices.

Fees for justices' licence.

Sec. 7. That no such licence for a theatre shall be granted by the lord chamberlain or justices to any person except the actual and responsible manager for the time being of the theatre in respect of which the licence shall be granted; and the name and place of abode of such manager shall be printed on every play bill announcing any representation at such theatre; and such manager shall become bound himself in such penal sum as the lord chamberlain or justices shall require, being in no case more than £500, and two sufficient sureties, to be approved by the said lord chamberlain or justices, each in such penal sum as the lord chamberlain or justices shall require, being in no case more than £100, for the due observance of the rules which shall be in force at any time during the currency of the licence for the regulation of such theatre, and for securing payment of the penalties which such manager may be adjudged to pay for breach of the said rules, or any of the provisions of this Act.

To whom licences shall be granted.

Sec. 8. That in case it shall appear to the lord chamberlain that any riot or misbehaviour has taken place in any theatre licensed by him, or in any patent theatre, it shall be lawful for him to suspend such licence or to order such patent theatre to be closed for such time as to him shall seem fit; and it shall also be lawful for the lord chamberlain to order that any patent theatre or any theatre licensed by him shall be closed on such public occasions as to the lord chamberlain shall seem fit; and while any such licence shall be suspended, or any such order shall be in force, the theatre to which the same applies shall not be entitled to the

Rules for the theatres under the control of the lord chamberlain.

Players and Playhouses.

Rules for enforcing order in the theatres licensed by the justices.

privilege of any letters patent or licence, but shall be deemed an unlicensed house.

Sect. 9. That the said justices of the peace at a special licensing session, or at some adjournment thereof, shall make suitable rules for insuring order and decency at the several theatres licensed by them within their jurisdiction, and for regulating the times during which they shall severally be allowed to be open, and from time to time, at another special session, of which notice shall be given as aforesaid, may rescind or alter such rules; and it shall be lawful for any one of her Majesty's principal secretaries of state to rescind or alter any such rules, and also to make such other rules for the like purpose, as to him shall seem fit; and a copy of all rules which shall be in force for the time being shall be annexed to every such licence, and in case any riot or breach of the said rules in any such theatre shall be proved on oath before any two justices usually acting in the jurisdiction where such theatre is situated, it shall be lawful for them to order that the same be closed for such time as to the said justices shall seem fit; and while such order shall be in force the theatre so ordered to be closed shall be deemed an unlicensed house.

Proviso for the universities of Oxford and Cambridge.

Sect. 10 provides and enacts, that no such licence shall be in force within the precincts of either of the universities of Oxford or Cambridge, or within fourteen miles of the city of Oxford or town of Cambridge, without the consent of the chancellor or vice-chancellor of each of the said universities respectively, and that the rules for the management of any theatre which shall be licensed with such consent within the limits aforesaid shall be subject to the approval of the said chancellor or vice-chancellor respectively; and in case of the breach of any of the said rules, or of any condition on which the consent of the chancellor or vice-chancellor to grant any such licence shall have been given, it shall be lawful for such chancellor or vice-chancellor respectively to annul the licence, and thereupon such licence shall become void.

Penalty on persons performing in unlicensed theatre.

Sect. 11. That every person who for hire shall act or present, or cause, permit, or suffer to be acted or presented, any part in any stage play, in any place not being a patent theatre or duly licensed as a theatre, shall forfeit such sum as shall be awarded by the Court in which or the justices by whom he shall be convicted, not exceeding £10 for every day on which he shall so offend.

The manager of a booth used as a portable theatre, not being a patent theatre or duly licensed as one, caused to be acted in it a stage play, by a company of strolling actors, the booth being then pitched on a private piece of ground rented for the purpose of holding an unlicensed pleasure fair. It was held that he was liable to a penalty under this section, a booth used as a portable or temporary theatre being a "place" within the meaning of this section. (*Fredericks v. Payne*, 1 H. & C. 584; 32 L. J., M. C. 14, and see also *Davys v. Douglas*, ante, 1272; see also *Reg. v. Strugnell*, ante, 1272).

If a person act as stage manager, or pay or dismiss an actor, it is sufficient proof that he caused the performance, and it is immaterial whether he does it as the agent of another or not. (*Parsons v. Chapman*, 5 Car. & P. 33.)

As to what shall be deemed evidence of an acting for hire, see sect. 16, *post*, 1275.

As to what may be evidence of causing a play to be acted, see *R. v. Glossop*, 4 B. & Ald. 616.

As to on whom lies the proof of the theatre being licensed or not, see sect. 17, *post*, 1276.

A conviction under the 10 Geo. 2, c. 28, s. 2, for performing without patent from the king, or licence from the lord chamberlain, at Manchester, was held good; it was held, that it was for the defendant to

show, if such be the fact, that he had a licence from the sessions, under the 28 Geo. 3, c. 30. (*R. v. J. G. Neville, 1 B. & Ad. 489.*)

Players and Playhouses.

Sect. 12. That one copy of every new stage play, and of every new act, scene, or other part added to any old stage play, and of every new prologue or epilogue, and of every new part added to an old prologue or epilogue, intended to be produced and acted for hire at any theatre in Great Britain, shall be sent to the lord chamberlain of her Majesty's household for the time being, seven days at least before the first acting or presenting thereof, with an account of the theatre where and the time when the same is intended to be first acted or presented, signed by the master or manager, or one of the masters or managers, of such theatre; and during the said seven days no person shall for hire act or present the same, or cause the same to be acted or presented; and in case the lord chamberlain, either before or after the expiration of the said period of seven days, shall disallow any play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, it shall not be lawful for any person to act or present the same, or cause the same to be acted or presented, contrary to such disallowance.

No plays or additions to old ones to be acted until submitted to lord chamberlain.

Sect. 13. That it shall be lawful for the lord chamberlain to charge such fees for the examination of the plays, prologues, and epilogues, or parts thereof, which shall be sent to him for examination, as to him from time to time shall seem fit, according to a scale which shall be fixed by him, such fee not being in any case more than two guineas, and such fees shall be paid at the time when such plays, prologues, and epilogues, or parts thereof, shall be sent to the lord chamberlain; and the said period of seven days shall not begin to run in any case until the said fee shall have been paid to the lord chamberlain, or to some officer deputed by him to receive the same.

Fees to be paid for examination of plays, etc.

Sect. 14. That it shall be lawful for the lord chamberlain for the time being, whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do, to forbid the acting or presenting any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, anywhere in Great Britain, or in such theatres as he shall specify, and either absolutely or for such time as he shall think fit.

The lord chamberlain may forbid any play.

Sect. 15. That every person who for hire shall act or present, or cause to be acted or presented, any new stage play, or any act, scene, or part thereof, or any new prologue or epilogue, or any part thereof, until the same shall have been allowed by the lord chamberlain, or which shall have been disallowed by him, and also every person who for hire shall act or present, or cause to be acted or presented, any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, contrary to such prohibition as aforesaid, shall for every such offence forfeit such sum as shall be awarded by the Court in which or the justices by whom he shall be convicted, not exceeding the sum of £50; and every licence (in case there be any such) by or under which the theatre was opened, in which such offence shall have been committed, shall become absolutely void.

Penalty for acting plays before they are allowed or after they have been disallowed.

Sect. 16. That in every case in which any money or other reward shall be taken or charged, directly or indirectly, or in which the purchase of any article is made a condition for the admission of any person into any theatre to see any stage play, and also in every case in which any stage play shall be acted or presented in any house, room, or place in which distilled or fermented exciseable liquor shall be sold, every actor therein shall be deemed to be acting for hire. (*See "Disorderly House," Vol. I.*)

What shall be evidence of acting for hire.

Sect. 17. That in any proceedings to be instituted against any person for having or keeping an unlicensed theatre, or for acting for hire in

Proof of licence in certain cases

Players and Playhouses.

to lie on the party accused.

an unlicensed theatre, if it shall be proved that such theatre is used for the public performance of stage plays, the burden of proof that such theatre is duly licensed or authorized shall lie on the party accused, and until the contrary shall be proved such theatre shall be taken to be unlicensed.

In *Parsons v. Chapman* (5 Car. & P. 33), which was an action for penalties under the 10 Geo. 2, c. 28, Lord *Tenterden*, C. J., held that the onus of proving a patent or licence lay on the defendant.

Proceedings begun before the passing of this Act may be discontinued.

Sect. 18. That after the passing of this Act it shall be lawful for any person against whom any action or information shall have been commenced, for the recovery of any forfeiture or pecuniary penalty incurred under the said Act of the tenth year of the reign of king George the second, to apply to the Court in which such action or information shall have been commenced, if such Court shall be sitting, or if such Court shall not be sitting, to any judge of either of the superior Courts at Westminster, for an order that such action or information shall be discontinued, upon payment of the cost thereof incurred to the time of such application being made, such costs to be taxed according to the practice of such Court; and every such Court or judge (as the case may be), upon such application, and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application, shall make such order as aforesaid; and upon the making such order and payment, or tender of such costs as aforesaid, such action or information shall be forthwith discontinued.

Penalties how to be recoverable.

Sect. 19. That all the pecuniary penalties imposed by this Act for offences committed in England may be recovered in any of her Majesty's Courts of record at Westminster, and for offences committed in Scotland by action or summary complaint before the Court of session or justiciary there, or for offences committed in any part of Great Britain in a summary way before two justices of the peace for any county, riding, division, liberty, city, or borough where any such offence shall be committed, by the oath or oaths of one or more credible witness or witnesses, or by the confession of the offender, and in default of payment of such penalty together with the costs, the same may be levied by distress and sale of the offender's goods and chattels, rendering the overplus to such offender, if any there be above the penalty, costs, and charge of distress; and for want of sufficient distress the offender may be imprisoned in the common gaol or house of correction of any such county, riding, division, liberty, city, or borough for any time not exceeding six calendar months (a).

A conviction by two justices under the repealed statute of 20 Geo. 2, c. 28, having been affirmed on appeal, was, together with the order of sessions, removed into this Court by *certiorari*, and confirmed. A *levari facias* issued out of this Court for the penalty, and there was a return of *nulla bona*. The Court of King's Bench, not having authority to exercise the discretion given by the statute to the justices, as to the term of imprisonment, granted a *procedendo* to carry back to the sessions the record of conviction, and the order of sessions, and commanding the justices to enter continuances upon the appeal from session to session and proceed to award execution. (*R. v. Neville*, 2 B. & Ad. 299.)

Appeal.

Sect. 20. That it shall be lawful for any person who shall think himself aggrieved by any order of such justices of the peace to appeal therefrom to the next general or quarter session of the peace to be holden for the said county, riding, division, liberty, city, or borough, whose order therein shall be final.

Appropriation of the penalties.

Sect. 21. That the said penalties for any offence against this Act shall

(a) See *Leary v. Patrick*, ante, 1272.

be paid and applied in the first instance toward defraying the expenses incurred by the prosecutor, and the residue thereof (if any) shall be paid to the use of her Majesty, her heirs and successors.

Players and Playhouses.

Sect. 22 provides and enacts, that no person shall be liable to be prosecuted for any offence against this Act unless such prosecution shall be commenced within six calendar months after the offence committed.

Limitation of actions.

Sect. 23. That in this Act the word "stage-play" shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof: Provided always that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which by the justices of the peace, or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind.

Interpretation of Act.

The proprietor of a house of public resort, licensed for music and dancing under 25 Geo. 2, c. 36, afforded therein to the public an entertainment of the following nature: there were an orchestra, stage and scenery, as in a theatre; a body of female dancers descended from rocks on to the stage, and danced with daggers in mimic warfare; this dance ended by some standing over others as if in triumph, and retiring on the approach of another set of female dancers with palm-leaves; the dancers then formed an avenue to receive another dancer, who danced a *pas seul*, and the whole concluded by a grouping of all the dancers with palm leaves and other stage properties:—Held, that whether or not this was a stage play requiring a licence under 6 & 7 Vict. c. 68, was a question of fact and not of law. (*Wigan v. Strange*, 1 H. & R. 41; 35 L. J., M. C. 31; L. R., 1 C. P. 175.)

A house licensed for music and dancing was used to represent an entertainment in which there was a dialogue between parties bodily on the stage (with all its accessories) and also dramatic action, and a regular plot performed by other parties, not upon the stage, but whose images were reflected upon it:—Held a stage play within 6 & 7 Vict. c. 68. (*Day v. Simpson*, 18 C. B., N. S. 680; 34 L. J., M. C. 149.)

In *R. v. Handy*, 6 T. R. 286, it was held that tumbling was not an entertainment of the stage within the 10 Geo. 2, c. 28: in that case the defendant was convicted in the penalty of £50, under that Act for acting, representing, and performing a certain entertainment of the stage, called tumbling, etc., at Birmingham; which conviction was removed by *certiorari*, in order to take the opinion of the Court whether this offence came within the statute. Lord Kenyon, C. J. (*inter alia*), said, "I do not think that tumbling is an entertainment of the stage within the meaning of the Act; it might equally be said that fencing on a public stage is. By the third section of this Act, a copy of the piece to be represented is to be sent to the lord chamberlain for his approbation previous to the acting; but no copy could have been given of this entertainment. This is a penal Act, and cannot be extended to entertainments which did not exist when the Act was made.

Sect. 24. That this Act shall extend only to Great Britain.

Limit of Act.

By the "Metropolitan Police Act," 2 & 3 Vict. c. 47, s. 46, a commissioner of police may by order in writing authorize any superintendent, with constables, to enter any house or room kept or used within the metropolitan police district for stage plays or dramatic entertainments into which admission is obtained on payment of money, and which is not a licensed theatre, at any time when the same shall be open for the reception of persons resorting thereto, and to take into custody all persons who shall be found therein without lawful excuse: party keeping, using, or knowingly letting any house and other tenement for such purpose

Police empowered to enter unlicensed theatres, etc., and apprehend persons found in them.

Plea.

liable to a penalty not exceeding £20, or to be imprisoned for any time not exceeding two calendar months; performers, or persons being therein, liable to a penalty not exceeding 40s.

Plea.

Plea or demurrer.

When the indictment is found, the defendant may either plead to it, or demur. By pleading, he puts in issue the facts of the charge; by demurring, he admits the facts, and contends that they charge no offence indictable by law. See "*Demurrer*," Vol. I., as to demurrers.

Pleas are either in abatement or bar.

Pleas in abatement.

As to pleas in abatement. See "*Abatement*," Vol. I.

Pleas in bar.

Pleas in bar are either special pleas, or the general issue. Special pleas may be of a previous conviction of the same offence, or a previous acquittal on a valid indictment, or of a pardon. (See "*Autrefois Convict*," "*Acquittal*," "*Autrefois Attaint*," Vol. I., and "*Pardon*," ante, 1110.) Other special pleas are in practice confined to the cases of prosecutions for neglect of duty in repairing highways and bridges, when the parish indicted or presented for omitting to repair a highway, or the county indicted for omitting to repair a bridge, and desiring to throw the liability on some other party, must show that liability by specially pleading it. (See "*Highways in General*," Vol. II.; "*Bridges*," Vol. I.) By the 6 & 7 Vict. c. 96, s. 6, the defendant may specially plead the truth of a libel as a defence.

The general issue.

The plea employed in the infinitely greater number of cases in which the charge is denied, both misdemeanours and felonies, is the general issue, *not guilty*. This plea not only casts on the prosecutor the burden of making out every part of his charge, as stated in the indictment or information, but, except in the instances of prosecutions for not repairing highways and bridges above alluded to, and of prosecutions for a libel where the truth of it is set up as a defence, it entitles the defendant to give in evidence every possible ground of justification and excuse which can form an answer to such charge.

A plea of "not guilty," without more, shall put the prisoner on his trial by jury.

By the 7 & 8 Geo. 4, c. 28, s. 1, if any person, not having privilege of peerage, being arraigned upon any indictment for treason, felony, or piracy, shall plead thereto a plea of "not guilty," he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the Court shall, in the usual manner, order a jury for the trial of such person accordingly.

If he refuses to plead, court may order a plea of "not guilty" to be entered.

Sect. 2. If any person, being arraigned upon, or charged with, any indictment or information for treason, felony, piracy, or misdemeanour, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

A prisoner, who had been previously tried and convicted, but whose trial was deemed a nullity on account of some informality in swearing the witnesses, was again arraigned upon an indictment for the same offence, and refused to plead, alleging that he had been already tried: *Littledale, J.*, and *Vaughan, B.*, ordered a plea of not guilty to be entered for him under this enactment. (*R. v. Bitton*, 6 C. & P. 92.)

A person deaf and dumb was to be tried for felony : the judge ordered a jury to be impanelled, to try whether he was mute by the visitation of God ; the jury found that he was so : they were then sworn to try whether he was able to plead, which they found in the affirmative, and the defendant by a sign pleaded not guilty : the judge then ordered the jury to be impanelled to try whether the defendant was now sane or not, and on this question directed them to say, whether the defendant had sufficient intellect to understand the course of the proceedings, to make a proper defence, to challenge the jurors and comprehend the details of the evidence, and that if they thought he had not, they should find him of non-sane mind. (*R. v. Pritchard*, 7 C. & P. 303.)

Where a prisoner has pleaded guilty to a charge of felony, and sentence has been passed upon him, he cannot afterwards retract his plea and plead not guilty. (*Reg. v. Sell*, 9 C. & P. 346.)

See further, tit. " Trial," Vol. V.

Prisoner cannot after sentence retract plea of guilty.

C. D. } And the said C. D., by _____, his attorney, comes, at the suit of } and, having heard the said indictment read to him, says that he the Queen. } is not guilty of the premises in the said indictment specified, above laid to his charge ; and of this he, the said C. D., puts himself upon the country, etc.

Plea of general issue.

In the Queen's Bench.

Term,

Victoria.

C. D. } And the said C. D. appears here in Court by _____, at the suit of } his attorney, and prays oyer of the said information, and it is the Queen. } read to him ; which being by him heard and fully understood, he complains to have been grievously vexed and molested, under colour of the premises, and this the less justly, because protesting that the said information, and the matters therein contained, are insufficient in law, whereto he has no need, nor is he bound by the law of the land to answer ; for plea, nevertheless, the said C. D. says, that he is not guilty of the said supposed offences in the said information mentioned, and thereby alleged to have been committed by him the said C. D. ; and of this he, the said C. D., puts himself upon the country, etc.

Plea of general issue of information *ex officio* in Queen's Bench.

See form of replication, tit. " Replication," Vol. V. ; of rejoinder, tit. " Rejoinder," Vol. V.

Poison.

The 26 & 27 Vict. c. 113, which by section 1 may be cited as the " Poisoned Grain Prohibition Act, 1863," enacts, in section 2, that every person who shall offer or expose for sale or sell any grain, seed, or meal which has been so steeped or dipped in poison, or with which any poison or any ingredient or preparation has been so mixed, as thereby to render the same poisonous, and calculated to destroy life, shall in either case for every such offence, upon summary conviction, as hereinafter provided, forfeit any sum not exceeding £10.

Penalty for selling poisoned grain, seed, or meal.

3. Every person who shall knowingly and wilfully sow, cast, set, lay, put, or place, or cause to be sown, cast, set, laid, put, or placed, into, in, or upon any ground or other exposed place or situation, any such grain, seed, or meal which has been so steeped or dipped in poison, or with

Penalty for sowing, etc., poisoned grain, seeds, or meal.

Poison.

which poison or any ingredient or preparation has been so mixed as thereby to render such grain, seed, or meal poisonous, and calculated to destroy life, shall, upon a summary conviction thereof as hereinafter provided, forfeit any sum not exceeding £10.

Solutions or infusions, etc., allowed for use in agriculture.

Sect. 4. Nothing in this Act shall prohibit the offering or exposing for sale or selling or the use of any solution or infusion, or any material or ingredient for dressing, protecting, or preparing any grain or seed for *bonâ fide* use in agriculture only, or the sowing of such last-mentioned grain or seed so prepared.

Recovery of penalties.

Sect. 5. All penalties imposed by this Act may be recovered in England and Ireland before two justices of the peace, and in Scotland before two justices of the peace or the sheriff; and for that purpose in England and Scotland the provisions of the Act of the eleventh and twelfth years of her present Majesty, chapter forty-three, and in Ireland the "Petty Sessions (Ireland) Act, 1851," shall extend and apply to this Act, and to all proceedings in relation thereto; and it shall not in any such proceedings be necessary to allege or prove the ground or other place where an offence is committed to be the property of or occupied by any person: Provided always, that the convicting justices or sheriff may, if they or he shall think fit, award to the informer or prosecutor (not being a police constable or peace officer) in any such proceedings any portion not exceeding one moiety of any penalty recovered under the aforesaid enactments; Provided also, that every informer or prosecutor, and every person who shall give evidence against any other person proceeded against under this Act, shall be freed and discharged from any such penalty which he may have incurred for or by reason of his having participated or aided in the commission of the offence with respect to which he shall so inform or prosecute or give evidence, provided the information against such other person has been laid, or such evidence has been given, before the laying of any information (if any) against such informer, prosecutor, or witness for the recovery of any penalty he may have so incurred.

Application of 11 & 12 Vict. c. 43, and 14 & 15 Vict. c. 93, to this Act.

Informer (not a constable) entitled to moiety of penalty.

Indemnity to witnesses, etc.

Penalty for placing poisoned flesh in fields, etc.

The 27 & 28 Vict. c. 115, which, by sect. 1, may be cited as "The Poisoned Flesh Prohibition Act, 1864," enacts, by sect. 2, that every person who shall knowingly and wilfully set, lay, put, or place, or cause to be set, laid, put, or placed in or upon any land any flesh or meat which has been mixed with or steeped in or impregnated with poison or any poisonous ingredient so as to render such flesh or meat poisonous and calculated to destroy life, shall, upon a summary conviction thereof, forfeit any sum not exceeding £10, to be recovered in the manner provided by "The Poisoned Grain Prohibition Act, 1863." Provided always, that nothing herein contained shall prevent owners or occupiers of land in Ireland from laying or causing to be laid any poisonous matter as hereinbefore described, after a notice has been posted in a conspicuous place, and notice in writing has been given to the nearest constabulary station.

Not to apply to occupier placing poisoned preparations for destruction of vermin.

Sect. 3. Nothing in this Act shall make it unlawful for the occupier of any dwelling-house or other building, or the owner of any rick or stack of wheat, barley, oats, beans, peas, tares, seeds, or of any cultivated vegetable produce, to put or place or cause to be put or placed in any such dwelling-house or other building, or in any enclosed garden attached to such dwelling-house, or in the drains connected with any such dwelling-house, provided that such drains are so protected with gratings or otherwise as to prevent any dog from entering the same, or within such rick or stack, any poison or poisonous ingredient or preparation for the destruction of rats, mice, or other small vermin.

As to application of Act.

Sect. 4. This Act shall not apply to any grain, seed, or meal within the provisions of "The Poisoned Grain Prohibition Act, 1863," and the

provisions of the fifth section of the said "Poisoned Grain Prohibition Act, 1863," shall apply to any proceedings instituted under this Act, and shall come into operation on the 1st October, 1864."

By the 31 & 32 Vict. c. 121 (a), s. 15, from and after the 31st day of December, 1868, any person who shall sell or keep an open shop for the retailing, dispensing, or compounding poisons, or who shall take, use, or exhibit the name or title of chemist and druggist, or chemist or druggist, not being a duly registered pharmaceutical chemist, or chemist and druggist, or who shall take, use, or exhibit the name or title pharmaceutical chemist, pharmacist, or pharmacist, not being a pharmaceutical chemist, or shall fail to conform with any regulation as to the keeping or selling of poisons made in pursuance of this Act, or who shall compound any medicines of the 'British Pharmacopœia' except according to the formularies of the said Pharmacopœia, shall for every such offence be liable to pay a penalty or sum of £5, and the same may be sued for, recovered, and dealt with in the manner provided by the "Pharmacy Act for the Recovery of Penalties under that Act" (b); but nothing in this Act contained shall prevent any person from being liable to any other penalty, damages, or punishment to which he would have been subject if this Act had not passed.

Protection of titles, and restrictions on sale of poisons.

Sect. 16. Nothing hereinbefore contained shall extend to or interfere with the business of any legally-qualified apothecary or of any member of the Royal College of Veterinary Surgeons of Great Britain, nor with the making or dealing in patent medicines, nor with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing; and upon the decease of any pharmaceutical chemist or chemist and druggist actually in business at the time of his death, it shall be lawful for any executor, administrator, or trustee of the estate of such pharmaceutical chemist or chemist and druggist to continue such business if and so long only as such business shall be *bonâ fide* conducted by a duly qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a pharmaceutical chemist or a chemist and druggist registered by the registrar under the "Pharmacy Act" or this Act: Provided always, that registration under this Act shall not entitle any person so registered to practise medicine or surgery, or any branch of medicine or surgery.

Reserving rights of certain persons.

Sect. 17. It shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained be distinctly labelled with the name of the article and the word poison, and with the name and address of the seller of the poison; and it shall be unlawful to sell any poison of those which are in the first part of schedule (A.) to this Act, or may hereafter be added thereto under section two of this Act (c), to any person unknown to the seller, unless introduced by some person known to the seller; and on every sale of any such article the seller shall, before delivery, make or cause to be made an entry in a book to be kept for that purpose stating, in the form set forth in schedule (F.) to this Act, the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person, if any, who introduced him shall be affixed; and any person selling poison otherwise than is herein provided shall, upon a

Regulations to be observed in the sale of poisons.

(a) See sects. 1-14, noticed *ante*, 892.

(b) This is by plaint under the provisions of any Act in force for the more easy recovery of small debts and demands. See the 15 & 16 Vict.

c. 56, s. 12.

(c) That is, by resolution of the Pharmaceutical Society, with the approval of the Privy Council, advertised in the *London Gazette*.

Poison.

summary conviction before two justices of the peace in England or the sheriff in Scotland, be liable to a penalty not exceeding £5 for the first offence, and to a penalty not exceeding £10 for the second or any subsequent offence, and for the purposes of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller; but the provisions of this section, which are solely applicable to poisons in the first part of the schedule (A.) to this Act, or which require that the label shall contain the name and address of the seller, shall not apply to articles to be exported from Great Britain by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing, nor shall any of the provisions of this section apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act; provided such medicine be labelled in the manner aforesaid, with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose; and nothing in this Act contained shall repeal or affect any of the provisions of the 14 & 15 Vict. c. 13 (a).

SCHEDULES.

SCHEDULE (A.).

Part 1.

Arsenic and its preparations.

Prussic acid.

Cyanides of potassium and all metallic cyanides.

Strychnine and all poisonous vegetable alkaloids and their salts.

Aconite and its preparations.

Emetic tartar.

Corrosive sublimate.

Cantharides.

Savin and its oil.

Ergot of rye and its preparations.

Part 2.

Oxalic acid.

Chloroform.

Belladonna and its preparations.

Essential oil of almonds unless deprived of its prussic acid.

Opium and all preparations of opium or of poppies.

SCHEDULE (F.).

Date.	Name of purchaser.	Name and quantity of poison sold.	Purpose for which it is required.	Signature of purchaser.	Signature of person introducing purchaser.

(a) See this Act, Vol. I., tit. "*Arsenic*."

Police (Towns).

The 10 & 11 Vict. c. 89, is the consolidation Act for the police of towns. It is cited as "The Towns Police Clauses Act," and is referred to for incorporation in the usual way (s. 4).

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows :

Interpretations
in this Act :

Sect. 2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district defined or comprised therein and with which this Act shall be incorporated; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof.

"the special
Act;"

"prescribed;"

"the commis-
sioners."

Sect. 3. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say) :

Interpretations
in this and the
special Act :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

number ;

Words importing the masculine gender shall include females :

gender ;

The word "person" shall include a corporation, whether aggregate or sole :

"person ;"

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure :

"lands;"

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare or public passage within the limits of the special Act :

"street;"

The word "month" shall mean calendar month :

"month ;"

The expression "superior Courts" shall mean her Majesty's superior Courts of record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the county palatine of Lancaster and the Court of Common Pleas of the county of Durham :

"superior
Courts ;"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath :

"oath ;"

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town :

"county ;"

*Police
(Towns).*

"justice;"

"two justices;"

"quarter
sessions;"

"cattle."

Appointment of
constables.Power to apply
for additional
constables in
case of need.Constables to be
sworn in.Expenses of pro-
secutions, and
allowances to
constables.Constables not to
resign without
leave or notice.

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together:

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined, shall mean the general or quarter sessions of the peace which shall be held in or at the place nearest to the district comprised within the special Act for the county in which such district or some part thereof is situated, or for some division of such county having a separate commission of the peace:

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Sect. 6. If any constables shall have been appointed within the limits of the special Act under 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, and if the justices for the county in which such district is situated, in general or quarter sessions assembled, report to one of her Majesty's principal secretaries of state that the constables so appointed ought to be discontinued, and the said constables be, in pursuance thereof or otherwise, discontinued, or where no constables shall have been appointed under the provisions of the last-mentioned Act, the commissioners may from time to time appoint and employ a superintendent constable and also such number of constables as they judge necessary for the protection of the inhabitants and property within the said limits, and allow the superintendent constable and the other constables such salaries or wages as they think proper; and it shall be lawful for the commissioners from time to time to remove any such superintendent constable, constables and officers as they think fit.

Sect. 7. Where constables shall have been appointed under the last two recited Acts, or either of them, the commissioners, if they think it necessary so to do, may apply to the chief constable of the county in which the district within the said limits is situated, under the provisions of the last-recited Act, to appoint any additional number of constables within the said limits, and they may pay the charge of such appointments out of the rates to be levied under this and the special Act.

Sect. 8. Any justice may swear in any person appointed and employed as a constable under this and the special Act, and the constables so sworn in shall have, within the limits of the special Act, and in any place not more than five miles beyond such limits, the like powers, privileges, and duties, and shall have the same indemnities and protection, and shall be subject to the like penalties and forfeitures, as any constable duly appointed has or is subject to within his constableness by law.

Sect. 9. The commissioners may defray the expense of prosecuting any felons or offenders, and of defending any constable in the execution of his duty, and may make such allowances to any constable disabled in the execution of his duty, or worn out by length of service, as the commissioners think reasonable.

Sect. 10. No constable appointed under this or the special Act shall resign his office, or withdraw himself from the duties thereof, unless expressly allowed so to do in writing by the commissioners or by the superintendent constable, or until after he has given to such superintendent constable one month's notice; and every constable who so resigns or withdraws himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him, or to a penalty of not more than

£5, or, in the discretion of the justices before whom he shall be convicted, may be committed to prison, there to remain for a time not exceeding fourteen days.

*Police
(Towns).*

Sect. 11. Every constable appointed under this or the special Act who is dismissed from or ceases to hold and exercise his office shall forthwith deliver over to the superintendent constable, or to such person and at such time and place as the commissioners direct, all the clothing, accoutrements, appointments, and other necessities which have been supplied to him for the execution of his duty, under pain of imprisonment, with or without hard labour, for any time not exceeding one month; and any justice of the peace may issue his warrant to search for and seize to the use of the commissioners all the clothing, accoutrements, appointments, and other necessities not so delivered over, wherever the same are found.

Constables dismissed to deliver up accoutrements.

Sect. 12. Every person who, not being at the time a constable appointed under this or the special Act, has in his possession any article being part of the clothing, accoutrements or appointments supplied to any such constable, and who is not able satisfactorily to account for his possession thereof, or who puts on the dress or takes the name, designation or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he is liable for such offence, be liable to a penalty of not exceeding £10.

Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.

Sect. 13. The commissioners may from time to time purchase or rent any buildings or land, and convert such buildings into or build on such land offices, watch-houses, lock-up houses and other places necessary for the purposes of this and the special Act, with all proper conveniences thereto, and may repair the same from time to time, and furnish and fit up the same, and employ proper persons to take care thereof.

Power to provide offices, watch-houses, etc.

Sect. 14. The constables appointed by virtue of this and the special Act shall keep watch and ward within the limits of the special Act, and shall use their best endeavours to prevent any mischief by fire, and all felonies, misdemeanours and breaches of the peace.

Duties of constables.

Sect. 15. Any person found committing any offence punishable either upon indictment or as a misdemeanour upon summary conviction by virtue of this or the special Act may be taken into custody, without a warrant, by any of the said constables, or may be apprehended by the owner of the property on or with respect to which the offence is committed, or by his servant or any person authorized by him, and may be detained until he can be delivered into the custody of a constable; and the persons so arrested shall be taken, as soon as conveniently may be, before some justice, to be examined and dealt with according to law: Provided always, that no person arrested under the powers of this or the special Act shall be detained in custody by any constable or other officer, without the order of some justice, longer than shall be necessary for bringing him before a justice, or than forty hours at the utmost.

Power to police constables and persons aggrieved to apprehend certain offenders.

Sect. 16. Every constable acting within the limits of the special Act, who is guilty of any neglect or violation of his duty as a constable, and convicted thereof before two justices, shall be liable to a penalty not exceeding £10, the amount of which penalty may be deducted from the salary or wages due to him or to become due to him, or, in the discretion of the justices before whom he is convicted, he may lawfully be imprisoned for any time not exceeding one month, with or without hard labour.

Penalty for neglect of duty.

*Police
(Towns).*

Power to constables to take recognizances.

Sect. 17. Whenever any person charged with any offence under this or the special Act, or any Act incorporated therewith, not amounting to felony, and of which he is liable to be summarily convicted before a justice, is in the custody of any constable acting as aforesaid, without the warrant of a justice, the superintendent constable of the district, or appointed under this Act, or other the superior officer of police acting within the said limits, may, if he deem it prudent so to do, but in such cases only in which the offender cannot be conveniently taken before a justice, take the recognizance of such person, with or without sureties, conditioned as hereinafter mentioned.

Form of recognizances.

Sect. 18. Every recognizance so taken shall be taken without fee or reward, and shall be conditioned for the appearance of the person thereby bound before a justice, at a certain day not later than seven days from the date of such recognizance, and the time and place of such appearance shall be specified in the recognizance.

Recognizances to be registered and returned to the justice.

Sect. 19. The officer taking any such recognizance shall enter in a book to be kept for that purpose the name, residence and occupation of the party and his sureties, if any, entering into such recognizance, together with the condition thereof, and the sum thereby acknowledged, and shall return every such recognizance to the justice at the time and place when and where the party is bound to appear, and every such recognizance shall have the like force and effect as if the same had been taken before a justice.

Penalties on persons assaulting constables.

Sect. 20. Every person who assaults or resists, or who aids or incites any person to assault or resist, any constable in the execution of his duty under the provisions of this or the special Act, shall for every such offence be liable to a penalty not exceeding £5, or, in the discretion of the justice before whom he is convicted, may be imprisoned for any term not exceeding one month, with or without hard labour.

Power to prevent obstructions in the streets during public processions, etc.

Sect. 21. The commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses and persons, and for preventing obstruction of the streets within the limits of the special Act, in all times of public processions, rejoicings or illuminations, and in any case when the streets are thronged or liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding 40s.

Power to regulate the route of persons driving carriages, etc., during divine service.

Sect. 22. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive any cart or carriage, or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, and any orders so made shall be printed and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding 40s.

Proprietors of stage carriages deviating from route by order

Sect. 23. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence which the driver of such

stage carriage makes in consequence of any regulation or direction made or given by the commissioners.

*Police
(Towns).*

Sect. 24. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding 40s., besides the reasonable expenses of impounding and keeping such cattle.

free from
penalty.
Power to im-
pound stray
cattle.

Sect. 25. If the said penalty and expenses be not paid within three days after such impounding, the pound keeper, or other person appointed by the commissioners for that purpose, may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Power to sell
stray cattle for
penalty and
expenses.

Sect. 26. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months.

Persons guilty of
poundbreach to
be committed for
three months.

Sect. 27. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners.

Power to provide
a pound.

Sect. 28. Every person who in any street, to the obstruction, annoyance or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding 40s. for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, and any constable or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence (that is to say):

Penalty on per-
sons committing
any of the of-
fences herein
named.

Every person who exposes for show, hire or sale (except in a market or market place or fair lawfully appointed for that purpose), any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains or breaks or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal:

*Police
(Towns).*

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state :

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice :

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot :

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage, as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care :

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle :

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare :

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing place, stool, bench, stall, or showboard on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter or thing whatsoever, so that the same project into or over any footway, or beyond the line of any

house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

Every common prostitute or nightwalker loitering and importuning passengers for the purposes of prostitution :

Every person who wilfully and indecently exposes his person :

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language :

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework :

Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door (*a*), or who wilfully and unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so enclosed as to prevent mischief to passengers) :

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or

(*a*) The mere fact of a man being instructed to deliver papers at the house of a third person is no answer to a complaint against him under this clause charging him with having "wilfully and wantonly" disturbed

the complainant and his family by violently ringing and knocking at the door at an unreasonable hour of the night. (*Clark v. Hoggins*, 11 C. B., N. S. 545.)

*Police
(Towns).*

other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto :

Every person who throws or lays any dirt, litter, or ashes, or night-soil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street : Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases :

Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance.

Penalty on drunken persons, etc., guilty of riotous or indecent behaviour.

Sect. 29. Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station house within the limits of the special Act, shall be liable to a penalty not exceeding 40s. for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days.

Penalty for setting chimneys wilfully on fire.

Sect. 30. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding £5 : Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for accidentally allowing chimneys to catch fire.

Sect. 31. If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding 10s. : Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant.

Fire engines and firemen may be provided by the commissioners.

Sect. 32. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire as they think fit.

Fire police permitted to go beyond the limits of the Act in certain cases.

Sect. 33. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits ; and the owner of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen ; and in case of any difference between the commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines

and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed), shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

Sect. 34. Every victualler or keeper of any public house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall for every such offence be liable to a penalty not exceeding 20s.

Penalty on
victuallers har-
bouring constab-
les while on
duty.

Sect. 35. Every person keeping any house, shop, room, or other place of public resort within the limits of the special Act, for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises, shall for every such offence be liable to a penalty not exceeding £5.

Penalty on coffee
shop keepers
harbouring dis-
orderly persons.

Sect. 36. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting, or worrying any animals, shall be liable to a penalty of not more than £5, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month; and the commissioners may, by order in writing, authorize the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding 5s.; and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned.

Penalty on per-
sons keeping
places for bear-
baiting, cock-
fighting, etc.

Sect. 37. The commissioners may from time to time license to ply for hire within the prescribed distance, or, if no distance is prescribed, within five miles from the general post office of the city, town, or place to which the special Act refers (which in that case shall be deemed the prescribed distance), such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.

Hackney car-
riages to be
licensed.

Sect. 38. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act.

What to be hack-
ney carriages.

Sect. 39. For every such licence there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding 5s.

Fee to be paid
for licence.

Sect. 40. Before any such licence is granted, a requisition for the

Persons apply-

*Police
(Towns).*

ing for licence to
sign a requisition
for same.

same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage in respect of which such licence is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage; and any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing or letting to hire of such carriage, shall be liable to a penalty not exceeding £10.

What shall be
specified in the
licences.

Sect. 41. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such licence which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

Licences to be
registered.

Sect. 42. Every licence shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

Licence to be in
force for one
year only.

Sect. 43. Every licence so to be granted shall be under the common seal of the commissioners, if incorporated, or if not incorporated shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners.

Notice to be
given by proprie-
tors of hackney
carriages of any
change of abode.

Sect. 44. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping, employing, or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing signed by him to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such licence at the office of the commissioners, who shall, by their clerk or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such licence as aforesaid as the proprietor or one of the proprietors of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum as aforesaid may be endorsed thereon, within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding 40s.

Penalty for ply-
ing for hire with-
out a licence.

Sect. 45. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance, without

having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which such licence as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding 40s.

Sect. 46. No person shall act as driver of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the commissioners, which licence shall be registered by the clerk to the commissioners, and a fee of 1s. shall be paid for the same; and every such licence shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned.

Drivers not to act without first obtaining a licence.

Sect. 47. If any person acts as such driver as aforesaid without having obtained such licence or during the time that his licence is suspended, or if he lend or part with his licence, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such licence, or during the time that his licence is suspended as hereinafter provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding 20s.

Penalty on drivers acting without licence.

Sect. 48. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the licence of such driver while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the licence of such driver, if he be then in his employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the licence of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him, and to retain in his possession, the licence of any driver while such driver remains in his employ, or if he refuse or neglect to produce such licence as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding 40s.

Proprietor to retain licence of drivers when in his employ, and to produce the same when summoned.

Justices may endorse convictions upon licences.

Penalty on proprietors for neglect.

Sect. 49. When any driver leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him; but if such driver have been guilty of any misconduct the proprietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint; and if upon inquiry it appear that the licence of such driver has been improperly withheld, such justice shall direct the immediate redelivery of such licence, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

Proprietor to return licence to drivers when quitting his service if they behave well, if otherwise, proprietors to summon them.

Compensation in case of licence being improperly withheld.

Sect. 50. The commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any bye-law made in pursuance thereof, suspend

Licences to be suspended or revoked for misconduct.

*Police
(Towns).*

Number of persons to be carried in a hackney carriage to be painted thereon.

or revoke, as they deem right, the licence of any such proprietor or driver.

Sect. 51. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire, within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in the form following (that is to say), "To carry persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length and of a proportionate breadth; and the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

Penalty for neglect or for refusal to carry the prescribed number.

Sect. 52. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding 40s.

Penalty on driver for refusing to drive.

Sect. 53. Every driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any bye-laws of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding 40s.

Penalty for demanding more than the sum agreed for, though less than the legal fare.

Sect. 54. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special Act, or any bye-law made thereunder, such proprietor or driver shall be liable to a penalty not exceeding 40s. if he exact or demand for such job more than the fare so agreed upon.

Agreement to pay more than the legal fare not to be binding, and sum paid beyond the proper fare may be recovered back.

Sect. 55. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any bye-law made under this or the special Act, shall be binding on the person making the same; and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid; and if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of 40s.; and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Driver to carry, under an agreement for discretionary distance, the distance to which hirer is

Sect. 56. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number

so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding 40s. if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any bye-law made in pursuance thereof.

*Police
(Towns).*

entitled for the fare.

Sect. 57. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the bye-laws, then the sum of 1s. 6d. for every half hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made, or if such driver, on the final discharge of such hackney carriage, refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding 40s.

Deposit to be made for carriages waiting.

Penalty on the driver refusing to wait, or to account for the deposit.

Sect. 58. Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorized by any bye-law made under this or the special Act shall be liable to a penalty not exceeding 40s., and such penalty may be recovered before one justice; and in the conviction of such proprietor or driver, an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved, whose evidence shall be admissible in proof of the said offence.

Overcharge by hackney coachmen etc., to be included in conviction, and returned to aggrieved party.

Sect. 59. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding 20s.

Penalty for permitting persons to ride without the consent of the hirer.

Sect. 60. No person authorized by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof; and no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor; and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding 40s. for every such offence.

No person to act as driver of any carriage without the consent of the proprietor.

Sect. 61. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding £5, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months.

Penalty on drivers misbehaving.

Sect. 62. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable

Penalty for leaving carriages unattended at

*Police
(Towns).*

places of public resort.

may drive away such hackney carriage, and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding £20s. for such offence; and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made; and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justices as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

Damage done by driver may be recovered from the proprietor.

Sect. 63. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding £5 as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.

Improperly standing with carriage; refusing to give way to or obstructing any other driver, or depriving him of his fare.

Sect. 64. Any driver of any hackney carriage who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding 20s.

Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

Sect. 65. If the driver of any such hackney carriage be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any bye-law made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable; and in default of payment of such compensation the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Penalty for refusing to pay the fare.

Sect. 66. If any person refuse to pay, on demand, to any proprietor or driver of any hackney carriage, the fare allowed by this or the special Act, or any bye-law made thereunder, such fare may, together with costs, be recovered before one justice as a penalty.

Penalty for damaging carriage.

Sect. 67. Any person using any hackney carriage plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding £5, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

Commissioners may make bye-

Sect. 68. The commissioners may from time to time (subject to the

restrictions of this and the special Act) make bye-laws for all or any of the purposes following (that is to say),—

Post Office.

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling :

laws for regulating hackney carriages.

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed :

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check-strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided :

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares :

For securing the safe custody and redelivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

Sect. 69 empowers the commissioners to make bye-laws to regulate bathing on the seashore.

Bathing places.

Sects. 70, 71 incorporate the provisions of the "Town's Improvement Clauses Act" (10 & 11 Vict. c. 34) as to rates and bye-laws.

Rates.

Sect. 72 provides for the tender of amends.

Tender of amends.

Sect. 73. The clauses of the "Railways Clauses Consolidation Act, 1845," with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the town or district within the limits of the special Act, and to the commissioners, and shall be construed as if the word "commissioners" had been inserted therein instead of the word "company."

Damages.

Sect. 75. All things herein or in the special Act, or any Act incorporated herewith, authorized or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

All things required to be done by two justices may in certain cases be done by one.

Sects. 77, 78 provide for access to copies of the Act.

Inspection of Act.

Post Office.

[7 Will. 4 & 1 Vict. c. 32, 36; 3 & 4 Vict. c. 96.]

The 7 Will. 4 & 1 Vict. c. 32, and 3 & 4 Vict. c. 96, s. 68, repeal the former Acts relative to offences against the post office, and regulating the

Post Office.

post office laws, and the amount of postage, etc. The principal Acts now in force on this subject are the 7 Will. 4 & 1 Vict. c. 36, and 3 & 4 Vict. c. 96.

7 Will. 4 & 1
Vict. c. 36.

Commencement
of Act.

By 7 Will. 4 & 1 Vict. c. 36, entitled "An Act for Consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the Judicial Administration of the Post Office Laws, and for explaining certain Terms and Expressions employed in those Laws" [12th July, 1837], s. 1, reciting the passing of the 1 Vict. c. 32, enacts, that on the day on which the recited Act shall come into operation [1st August, 1837], this Act shall come into operation for making provision respecting offences against the post office, and the judicial administration of the post office laws.

Contravening
the privilege of
post office.

Sect. 2. And for preventing any breach of the privilege conferred by the post office Acts on the postmaster-general for the benefit of the public revenue, be it enacted, that every person who shall convey otherwise than by the post a letter not exempted from the exclusive privilege of the postmaster-general shall for every letter forfeit £5, and every person who shall be in the practice of so conveying letters not so exempted shall for every week during which the practice shall be continued forfeit £100; and every person who shall perform otherwise than by the post any services incidental to conveying letters from place to place, whether by receiving or by taking up or by collecting, or by ordering or by dispatching, or by carrying or by re-carrying or by delivering a letter not exempted from the exclusive privilege of the postmaster-general, shall forfeit for every letter £5, and every person who shall be in the practice of so performing any such incidental services shall for every week during which the practice shall be continued forfeit £100; and every person who shall send a letter not exempted from the exclusive privilege of the postmaster-general otherwise than by the post, or shall cause a letter not so exempted to be sent or conveyed otherwise than by post, or shall either tender or deliver a letter not so exempt in order to be sent otherwise than by post, shall forfeit for every letter £5, and every person who shall be in the practice of committing any of the acts last-mentioned shall for every week during which the practice shall be continued forfeit £100; and every person who shall make a collection of exempted letters for the purpose of conveying or sending them otherwise than by the post, or by the post, shall forfeit for every letter £5; and every person who shall be in the practice of making a collection of exempted letters for either of those purposes shall forfeit for every week during which the practice shall be continued £100: And be it declared, that the term post shall herein include all post communications by land or by water (except by outward-bound vessels not being employed by or under the post office or the admiralty to carry post letters); and the above penalties shall be incurred whether the letter shall be sent singly or with anything else, or such incidental service shall be performed in respect to a letter either sent or to be sent, singly or together with some other letter or thing; and in any prosecution by action or otherwise for the recovery of any such penalty the onus shall lie upon the party prosecuted to prove that the act in respect of which the penalty is alleged to have been incurred was done in conformity to the post office laws.

Ship letters retained after delivering of letters to post office.

Sect. 3. That every person, being either the master of a vessel inward bound, or one of the officers, or one of the crew, or a passenger thereof, who shall knowingly have any letter in his possession not exempted from the privilege of the postmaster-general, after the master shall have sent any part of his ship's letters to the post office, shall forfeit for every letter £5: and whether the letter be in the baggage or on the person of the offender, or otherwise in his custody, it shall be held to be in his possession; and every such person who shall detain any such letter after demand made, either by the officer of the customs or by a person autho-

rized by the postmaster-general to demand ship's letters, shall forfeit for every letter £10.

Sec. 4 imposed penalties for abusing the privilege of franking letters and sending them post free, but such privileges have been since wholly abolished by the 3 & 4 Vict. c. 96, s. 56.

Sec. 5. And for the prevention of the abuse of the privilege of sending newspapers free by the post, or at a reduced rate, be it enacted, that every person who shall enclose or cause or procure to be enclosed in a newspaper to be sent by the post, or under the cover thereof, any letter or paper or thing, and every person who shall print or cause to be printed any words or communication, either upon any such newspaper, after the same shall have been published, or upon the cover thereof, or who shall put or cause to be put any writing or marks either upon the newspaper or upon the cover thereof, other than the name and address of the person to whom it shall be sent, and every person who shall knowingly either send or cause to be sent by the post, or who shall either deliver or tender in order to be sent by the post, a newspaper in respect of which any one of the offences hereinbefore mentioned shall have been committed, shall for every such offence forfeit treble the duty of postage, computed by weight and by distance, as if the paper in respect of which the offence was committed were a letter, such postage to be recoverable as postages not exceeding in amount £20 are recoverable; or he shall, except in those cases in which the said newspaper or cover shall only have marks thereon, and not writing, at the option of the postmaster-general, be prosecuted as for a misdemeanour, and shall suffer punishment accordingly.

Penalty on abuse of privilege as to newspapers.

Sec. 6. And for compelling the observance of the provisions of the post office laws relating to the conveyance of ship letters, be it enacted, that every master of a vessel outward-bound to Ceylon, the Mauritius, the East Indies, or the Cape of Good Hope, who shall refuse to take a post letter bag delivered or tendered to him by an officer of the post office for conveyance, shall forfeit £200; and every master of a vessel who shall open a sealed letter bag with which he shall be intrusted for conveyance shall forfeit £200; and every master of a vessel who shall take out of a letter bag with which he shall have been intrusted for conveyance a letter or any other thing shall forfeit £200; and every master of a vessel who shall not duly deliver a letter bag with the contents at the post office on his arrival in port, without wilful or unavoidable delay after his arrival, shall forfeit £200; and every person to whom letters may have been intrusted by the master of a vessel to bring on shore who shall break the seal, or in any manner wilfully open the same, shall forfeit £20; and every master of a vessel who shall refuse or wilfully neglect to make the declaration of having delivered his ship's letters to the post office, as required by an Act of the present session, intituled, "An Act for the Regulation of the Duties of Postage," shall forfeit £50; and every collector, comptroller, or officer of the customs who by the said Act is required to prohibit any vessel reporting until the requisites of such Act shall have been complied with, who shall permit such vessel to report before the requisites of such Act shall have been complied with, shall forfeit £50; and every master of a vessel (not having been able to send his letters ashore previous to his arrival at the port where the vessel is to report) who shall break bulk or make entry before all letters on board shall be sent to the post office shall forfeit £20; and every master of a vessel, or any other person on board any ship liable to the performance of quarantine, who shall neglect or refuse to deliver to the person or persons appointed to superintend the quarantine all letters in his possession, shall forfeit £20.

Penalties on masters of ships not taking letter bags.

Sec. 7. And whereas post letter bags and post letters are sometimes

Persons engaged

Post Office.

or employed in carrying, conveying or delivering bags or mails of letters, etc., guilty of carelessness, negligence, or misconduct, punishable on summary conviction before a justice of the peace.

lost or delayed by the carelessness or other misconduct of the persons having charge of the same; be it therefore enacted, that every person employed to convey or deliver a post letter bag or a post letter who shall whilst so employed [as to who is a person so employed, see *post*, 1304], or whilst the same shall be in his custody, care, or possession, leave a post letter bag or a post letter, or suffer any person, not being the guard or person employed for that purpose, to ride in the place appointed for the guard in or upon any carriage used for the conveyance of a post letter bag or post letter, or to ride in or upon a carriage so used and not licensed to carry passengers, or upon a horse used for the conveyance on horseback of a post letter bag or a post letter, or if any such person shall be guilty of any act of drunkenness, or of carelessness, negligence, or other misconduct, whereby the safety of a post letter bag or a post letter shall be endangered, or who shall collect or receive, or convey or deliver, a letter otherwise than in the ordinary course of the post, or who shall give any false information of an assault or attempt at robbery upon him, or who shall loiter on the road or passage, or wilfully misspend his time so as to retard or delay the progress or arrival of a post letter bag or a post letter, or who shall not use due and proper care and diligence safely to convey a post letter bag or a post letter at the rate of speed appointed by and according to the regulations of the post office for the time being, being thereof convicted, shall forfeit £20.

No hackney carriage to ply for hire opposite the General Post Office in London or Dublin.

Definition of hackney carriage within the meaning of this Act.

No hawker, news-vender, etc., to stop or loiter on pavement on penalty of £5.

Penalty on collectors of tolls, ferrymen, or keepers of gates, etc., demanding toll on mail coach, or stopping the mail.

Sect. 8. And to prevent obstructions opposite the General Post Offices in London and Dublin, be it enacted, that no hackney carriage shall stand or ply for hire opposite the General Post Office in Saint Martin's-le-Grand, London, or the General Post Office in Sackville Street, Dublin, or any part thereof respectively; and that every driver, or any person having the management of any hackney carriage, who shall permit the same to stand or ply for hire opposite either of the said post offices, shall forfeit for every such offence £5: and for the purposes of this provision every carriage with two or more wheels, whatever may be the form or construction of such carriage, or the number of persons which the same shall be calculated to convey, or the number of horses by which the same shall be drawn, shall be a hackney carriage within the meaning of this Act, and in all proceedings at law or otherwise, and upon all occasions whatsoever it shall be sufficient to describe it by the term hackney carriage; and every hawker, news-vender, or idle or disorderly person, who shall stop or loiter on the flagway or pavement opposite the General Post Office in Saint Martin's-le-Grand, London, or in Sackville Street, Dublin, or any part thereof respectively, shall forfeit for every such offence £5.

Sect. 9. That every toll collector or receiver, or other person employed to receive the tolls or rates at a turnpike gate or bar erected upon a highway, bridge, or post road, and every person who shall have the care of a gate of a walled town, or the custody of the keys of such gate, who shall demand toll for any person or horse or carriage going for or conveying or employed to go for or carry a mail, or who shall not permit the mail to pass without delay, or who shall wilfully delay or obstruct the mail at or in passing a turnpike gate or bar, or a gate of a walled town, shall for every such offence forfeit £5; and every ferryman or other person employed to receive the tolls or rates at a ferry who shall demand any such toll for any such person, horse, or carriage, or who shall not, within the space of fifteen minutes after demand made, convey the mail (if it be possible or safe to do so) across such ferry to the usual landing place, shall for every such offence forfeit £5.

Sect. 10. No officer of the post office travelling with a mail to pay for passing ferries in North America.

Abettors in of-

Sect. 11. That every person who shall aid, abet, or counsel or procure

the commission of an offence which is by the post office Acts punishable on summary conviction shall, on conviction before a justice of the peace in England and Ireland, and before a justice of the peace, sheriff, sheriff substitute, steward, or steward substitute in Scotland, be liable to the same forfeiture and punishment to which a principal offender is by the post office Acts made liable.

Post Office.

fences punishable on summary conviction.

Sect. 12. That all pecuniary penalties imposed by the post office Acts may be sued for and recovered, with full costs of suit, by any person who shall inform and sue for the same, in any of her Majesty's Courts of record at Westminster for any offence committed in England, Wales, or Berwick-upon-Tweed, and in her Majesty's Court of session in Scotland for any offence committed in Scotland, and in any of her Majesty's Courts of record in Dublin for any offence committed in Ireland; and the proceeding may be either by action of debt, or by bill or plaint or information, wherein no essoin, protection, or privilege, nor more than one imparlance, shall be allowed; and where the offence shall be committed in the British isles, or in any other parts of her Majesty's dominions, such penalties may be recovered in any of the royal or superior Courts of such isles, or other parts of her Majesty's dominions, by all the proceedings, ways, and means by which penalties are there recoverable.

In what Courts pecuniary penalties may be sued for.

Sect. 13. That any justice of the peace having jurisdiction where the offence shall be committed may hear and determine any offence against the post office Acts which may subject the offender to a pecuniary penalty not exceeding £20; and any such justice shall, upon information given or complaint made before him, summon the party accused, and also the witnesses on either side, to be and appear before him, or before any other justice of the peace, at a time and place to be appointed for that purpose; and either on the appearance of the party accused, or in default thereof, the justice present at the time and place appointed for such appearance may proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party, or by oath of one witness or more, may give judgment for the plaintiff or complainant, or for the defendant, and if for the plaintiff or complainant such justice may award and issue out his warrant for the levying of the penalty so adjudged, together with the costs and expenses of such proceeding, and also the costs and expenses of such warrant, and of levying the same on the goods of the offender, and may cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus (if any); and where goods of such offender cannot be found sufficient to answer the penalty, and all such costs and expenses, the justice shall commit the offender to the common gaol or house of correction, there to remain for any time not less than three calendar months and not exceeding six calendar months, if the full penalty imposed by the post office Acts for the offence of which such offender shall have been convicted shall amount to the sum of £20, and for any time not exceeding three calendar months if such penalty shall not amount to £20, unless such penalty and all such costs and expenses shall be sooner paid; and if the person convicted shall find himself aggrieved by the judgment of any such justice he may appeal against the same to the justices of the peace at the general or quarter sessions of the peace for the county or place within which the offence shall be committed which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions, and such justices at such sessions may examine witnesses upon oath, and finally hear and determine such appeal; and in case the judgment of the justice shall be affirmed the justices at such sessions may award and order the person appealing to pay such costs occasioned by such appeal as to them shall seem meet:

Mode of proceeding before justices for offences within their jurisdiction.

Appeal.

Post Office.

Provided always, that no person convicted before a justice shall be permitted to appeal against such conviction unless within five days next after such conviction made he shall enter into a recognizance, with two sufficient sureties, before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded in case such conviction shall be affirmed on the hearing of such appeal: Provided also, that no such proceedings so to be had or taken shall be quashed or vacated for want of form, or for any error or mistake which in the judgment of the Court has not a tendency to mislead the defendant, or shall be removed by *certiorari*, suspension, advocacy, or reduction, or by any other writ or process, into any superior or other Court or jurisdiction, any law or usage to the contrary notwithstanding.

Justices may mitigate penalties.

Sect. 14. That the justice of the peace before whom a person shall be convicted of an offence against the post office Acts may mitigate the penalty imposed in cases where such justice shall see cause so to do; provided that all reasonable costs and charges incurred in prosecuting for such offence shall be always allowed over and above the sum to which the penalty shall be mitigated.

Application of penalties.

Sect. 15. That all pecuniary penalties incurred under the post office Acts, which shall be sued or prosecuted for or recovered by or in the name of a person other than her Majesty's attorney-general in England, her Majesty's attorney-general in Ireland, or her Majesty's advocate for Scotland, or the solicitor to the post office, or any other officer of the post office in England, Ireland or Scotland respectively, shall respectively be distributed and divided in manner following (that is to say), one moiety thereof to her Majesty, and the other moiety thereof, with full costs of suit, to the person who shall inform and sue or prosecute for the same; and all such pecuniary penalties as aforesaid which shall be sued and prosecuted for and recovered by or in the name of the above-named officers shall be applied to the use of her Majesty: Provided always, that the postmaster-general, at his discretion, may give all or any part of such penalties or shares of penalties belonging to her Majesty as rewards to any person who shall have detected such offences, or given information which may have led to the discovery thereof or to the conviction of the offenders.

Justices shall receive the crown's share of penalties, and pay the same to the clerk of the peace, to be remitted to the post office.

Sect. 16. That every justice of the peace before whom a person shall be convicted of an offence against the post office Acts shall take the penalty or share of the penalty belonging to her Majesty levied or paid under such conviction, and shall pay or cause to be paid all such sums of money which he shall so take at the next general or quarter sessions of the peace after he shall have so taken the same into the hands of the clerk of the peace, town clerk, or other such officer of the county or place within which such conviction shall have been made, who shall within fourteen days after his receipt thereof, and without fee or reward, pay or remit the same, for the use of her Majesty, to the solicitor of the post office at the post office in London, Edinburgh, or Dublin, as the conviction shall happen to be in England, Scotland, or Ireland respectively; and every such justice shall, within one week after every such payment made by him to a clerk of the peace, town clerk, or other such officer, transmit to such solicitor a schedule containing the name of the person so convicted, the nature of the offence, and the amount of the penalty in which he shall have been convicted, the date of such conviction, and the sum of money which shall have been paid by virtue thereof, together with the name of the clerk of the peace, town clerk, or other such officer to whom he shall have paid the same; and every justice who shall omit to pay or cause to be paid to such clerk of the peace or other officer as aforesaid, at the time and in the manner hereinbefore directed, any such penalty or share of penalty received by him, or upon payment thereof

Penalty on the justice or clerk of the peace for omitting so to do.

shall omit to transmit to the proper solicitor of the post office such schedule, and every clerk of the peace, town clerk, or other officer who shall omit to pay or remit the penalty or share of penalty to such solicitor of the post office, within the time and in the manner hereinbefore directed in that behalf, shall forfeit £50.

Sect. 17. That when any person shall be summoned before a justice of the peace to answer an information or complaint exhibited or made against him by a person other than an officer of the post office, touching an offence committed or alleged to have been committed by such person against the post office Acts, and such information or complaint shall afterwards be withdrawn, or quashed or dismissed, or if the defendant shall be acquitted of the offence charged against him, the justice may order and award that the informer or person exhibiting the information or making the complaint shall pay to the defendant such costs of making or preparing for his defence, and also such compensation for his loss of time, and for the time of his witnesses (if any), in attending such justice touching such information or complaint, as to such justice shall seem reasonable; and in default of immediate payment of the sum so awarded the justice may cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if goods and chattels of such person sufficient to answer the sum so awarded, and such costs as aforesaid, cannot be found, the justice may commit such person to the common gaol or house of correction for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid.

Justices empowered to award costs to defendants where informations or complaints are withdrawn or dismissed in certain cases.

Sect. 18. That a summons issued by a justice of the peace requiring a defendant or a witness or other person to appear before him or any other justice, with reference to an information, complaint, or other proceeding for the recovery of any postage, postage debt, or penalty under the post office Acts, shall be deemed to be sufficiently served in case either the summons or a copy thereof be served personally upon the person as aforesaid, or be left at his usual or last known place of residence, or, if such person be a proprietor, driver, conductor, or guard of any stage carriage, if such summons or copy be left with the book-keeper or person for the time being acting as book-keeper for such stage carriage in any town or place from, into, or through which such carriage shall go or be driven nearest to the place where any such offence shall be committed.

What shall be deemed service of a justice's summons.

Sect. 19. That every constable or other peace officer who shall refuse or neglect to serve a summons or execute a warrant or order granted, issued, or made by a justice of the peace, pursuant to the post office Acts, shall forfeit £10.

Penalty for neglecting to serve a summons, etc.

Sect. 20. That every person who shall be summoned as a witness to give evidence before a justice of the peace, or before justices at sessions, touching the matters alleged in or relating to an information, complaint, appeal, or other proceeding depending upon such justice or justices for the recovery of a postage, postage debt, or penalty under the post office Acts, who shall neglect or refuse to appear before such justice or justices at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justice or justices, and every person so summoned who shall appear, but shall refuse to be examined and give evidence before such justice or justices touching the matters aforesaid, shall forfeit £10.

Penalty on witnesses neglecting to attend,

or refusing to give evidence.

Sect. 21. That upon the trial or hearing of an information exhibited or complaint made under the post office Acts any officer of the post office shall be a competent witness, notwithstanding that such officer may be the informant or complainant, or may be entitled to or expect a part of

Officers of the post office not disqualified from being witnesses.

Post Office.

any pecuniary penalty, or any remuneration or reward on the conviction of an offender upon such information or complaint.

In what manner goods distrained under this Act shall be sold.

Sect. 22. That in all cases where goods or chattels distrained or otherwise seized or taken under the post office Acts are directed to be sold, the same shall be sold by public auction; and notice of the time and place of such sale shall be given to the owner of such goods or chattels, or left at his last known place of abode, three days at least prior to such sale: Provided always, that if the owner of any such goods or chattels shall give his consent in writing to the sale thereof at an earlier period than is by this Act or shall be by any such notice appointed for such sale, or in any other manner than is by this Act directed, it shall be lawful to sell such goods or chattels according to such consent: Provided also, that if the owner of such goods or chattels shall at any time before the sale thereof pay or tender to the person who by any warrant or other process shall be directed or authorized to cause such goods or chattels to be sold the sum which he shall by such warrant or process be directed to levy or raise by the sale of such goods or chattels, together with all reasonable costs and expenses incurred, no sale of such goods or chattels shall be made.

Postmaster-general may compound actions, etc.

Sect. 23. That the postmaster-general may compromise and compound any action, suit, bill, plaint, or information which shall at any time hereafter be commenced by his authority or under his control against any person for recovering penalties incurred under the post office Acts, on such terms and conditions as the postmaster-general shall in his absolute discretion think proper, with full power for him, or any of his officers or agents by him thereunto authorized, to accept the penalties so incurred or alleged to be incurred, or any part thereof, without action, suit, or information brought or commenced for recovery thereof.

Penalties to be sued for within a year.

Sect. 24. That all penalties incurred by any person for offences against the post office Acts shall be sued for within the space of one year next after the penalty shall be incurred.

Opening or delaying post letters.

Sect. 25. That every person employed by or under the post office who shall contrary to his duty open or procure or suffer to be opened a post letter, or who shall wilfully detain or delay, or procure or suffer to be detained or delayed, a post letter, shall be guilty of a misdemeanour, and being convicted thereof, shall suffer such punishment by fine or imprisonment, or by both, as to the Court shall seem meet: Provided always, that nothing herein contained shall extend to the opening, or detaining, or delaying of a post letter returned for want of a true direction, or of a post letter returned by reason that the person to whom the same shall be directed is dead or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof; nor to the opening, or detaining or delaying of a post letter in obedience to an express warrant in writing under the hand of one of the principal secretaries of state.

Who a person in the employ of the post office.

In a prosecution for an offence under this and the next preceding section, it will be sufficient to prove that the prisoner acted as a person employed by or under the post office, without proving the appointment itself. (See *R. v. Rees*, 6 C. & P. 606; *R. v. Borrett*, *id.* 124; *R. v. Townsend*, 1 C. & Marsh. 178; *R. v. Godwin*, 1 Lewin, 100, and see the interpretation clause, sect. 47, *post*, 1313.) A person nominated jointly by the inhabitants of a village near a post town, and the postmaster of that town, to receive and deliver the letters to those inhabitants, was held not within the now repealed Act of 9 Anne, c. 10. s. 40. (*Martin v. Ford*, 5 T. R. 101.) It was proved that a post office letter carrier was in the daily habit of calling at the lodge of the G. infirmary, and there receiving letters, with a penny on each to pre-pay the postage of them; and that he took them, with the penny, to the G. post office; and that,

during his illness, a person who had performed his duties did the like : there was no evidence of any appointment :—It was held, in an indictment under the now repealed statute 2 Will. 4, c. 4, s. 1, for embezzling some of the pence thus received, that this was evidence to go to the jury, that the pence were received by the prisoner by virtue of his employment as a letter carrier. (*Reg. v. Townsend*, 1 Car. & M. 178.)

S., postmistress of G., received from A. a letter unsealed, but addressed to B., and with it £1 for a post office order, 3d. for the poundage on the order, 1d. for the postage, and 1d. for the person who got the order. S. gave the letter unsealed, and the money to the prisoner, who was the letter carrier from G. to L., telling him to get the order at L., and enclose it in the letter, and post the letter at L. The prisoner destroyed the letter, never procured the order, and kept the money: held, that he was indictable under sect. 26 of the 7 Will. 4 & 1 Vict. c. 36, for stealing, embezzling and destroying a post letter, he being at the time in the employ of the post office. (*R. v. Bickerstaff*, 2 C. & K. 761.)

The prisoner was employed to carry letters from C. A. to F., such employment being complete upon delivery of the letters at F. Upon one occasion, at the request of the postmaster at F., the prisoner assisted in sorting the letters at that place, and whilst so engaged stole one of the letters containing money:—Held, that the prisoner was a person employed under the post office. (*Reg. v. Reason*, 1 Dear. C. C. R. 226; 17 Jur. 1014.)

S. delivered two notes to Mrs. D., the wife of the postmaster at C., at which post office money orders were not granted, and asked her to send them by G., the letter carrier from C. to W., in order that he might get two £5 money orders for them at the W. post office. Mrs. D. gave those instructions to G., and put the notes by his desire into his bag. G. afterwards took the notes out of the bag, and pretended when he got to the W. post office that he had lost them. It was found by the jury that G. had no intention to steal the notes when they were given to him by Mrs. D.:—Held, that this taking of the notes by G. was not a larceny, the notes not being in his possession in the course of his duty as a post office servant. (*Reg. v. Glass*, 2 C. & K. 395; 1 Den. C. C. R. 215.)

It has also been held, that a person employed as a servant to clean boots and shoes, etc., by a law stationer at a receiving-house of the general post office in Middle Temple Lane, and who used to assist in tying up and sealing the post office bag, was not a person "employed by or under the post office" within the meaning of the 52 Geo. 3, c. 143. (*R. v. Pearson*, 4 C. & P. 572.)

Where however a postmistress employed the prisoner at a salary of 14s. a week to carry the letter bag from one place to another, and she was allowed by the post office in her quarterly account the sums she paid him, but the prisoner never sorted the letters or opened any mail bag,—it was held that he was a person in the employ of the post office. (*R. v. Salisbury*, 5 Car. & P. 155.)

Letters having arrived at a post office addressed to a party who had become bankrupt, the assignee (in that character) demanded them of the postmaster, and he believing, *bonâ fide*, that the assignee was entitled to have them for the purposes of the commission, delivered them up, this having been the practice of the office under similar circumstances for more than thirty years:—It was held that the postmaster was not liable under the now repealed Act, 9 Anne, c. 10, s. 40, for "wittingly, willingly, and knowingly" detaining letters, and causing them to be detained and opened. (*Meirelles v. Banning*, 2 B. & Ald. 909.)

Notwithstanding the above enactments against detaining or opening letters, the correspondence of the kingdom is still liable to the inspection of government; for, by a warrant from one of the principal secretaries of state, letters may be detained and opened. (See sect. 25, *ante*,

Servant.

Inspection of letters by government.

Post Office.

1304.) One of the reasons assigned in the ordinance made in 1657, for the establishment of the General Post Office, is, "that it will be the best means to discover and prevent many dangerous and wicked designs against the commonwealth." (1 *Bl. Com.* 322, *note*.)

Liability of
postmaster for
loss, etc., of
letters.

It was determined so long ago as 13 Will. 3, in the case of *Lane v. Cotton*, by three judges of the Court of King's Bench, though contrary to Lord C. J. *Holt's* opinion, that no action could be maintained against the postmaster-general for the loss of bills or articles sent in letters by the post. (*Lane v. Cotton*, 1 *Ld. Raym.* 646; 1 *Cowp. Rep.* 100.) A similar action was brought against Lord *Le Despenser* and Mr. *Carteret*, postmaster-general in 1778, to recover a bank note of £100, which had been sent by the post and was lost. Lord *Mansfield* delivered the opinion of the Court, that there was no resemblance or analogy between the postmasters and a common carrier, and that no action for any loss in the post office could be brought against any person except him by whose actual negligence the loss accrued. (*Whitfield v. Lord Le Despenser*, *Cowp.* 754, 765.) For this reason it is recommended by the secretary of the post office to cut bank notes and to send one half at a time. This is the only safe method of sending bank notes, as the Bank would never pay the holder of that half which had been fraudulently obtained.

Embezzling or
stealing a letter
or packet.

Sect. 26. That every person employed under the post office, who shall steal, or shall for any purpose whatever embezzle, secrete, or destroy a post letter, shall be guilty of felony, and shall, at the discretion of the Court, either be transported beyond the seas for the term of seven years, or be imprisoned for any term not exceeding three years; and if any such post letter so stolen or embezzled, secreted or destroyed, shall contain therein any chattel or money whatsoever, or any valuable security, every such offender shall be transported beyond the seas for life.

As to who is a person employed under the post office, see *ante*, 1304, and the interpretation clause, sect. 47, *post*, 1313.

The president of a department in the post office put a half sovereign into a letter, on which he wrote a fictitious address, and dropped the letter, with the money in it, into the letter box of a post office receiving house where the prisoner was employed in the service of the post office. The prisoner stole the letter and money: held, that this was a stealing of a post letter containing money within the 1 Vict. c. 36, s. 26, and that this was not the less a "post letter" within that enactment, because it had a fictitious address. (*Reg. v. Young*, 2 *C. & K.* 446; 1 *Den. C. C. R.* 194; overruling *Reg. v. Gardiner*, 1 *Car. & K.* 628.)

A. was indicted for stealing a post letter containing money, he being a sub-sorter at the General Post Office. It appeared that an inspector of the post office had put some marked money into a letter, which was then sealed and stamped with the usual postage stamp. It was addressed to a Mr. H., and delivered in at the window of the post office to another inspector, who handed it to a third. This last locked it up for the night, and on the following morning gave it to a sorter, who, according to his instructions, secretly placed it among other letters which A. in due course would have to sort. He opened and secreted the letter, abstracting the money which was found upon him. It was no part of the ordinary duty of the inspector to receive letters at the window, but the whole scheme was arranged for the detection of A.: held, that he could not be convicted of stealing a "post letter." (*Reg. v. Shepherd*, 1 *Dear. C. C. R.* 606; 2 *Jur. N. S.* 96; 25 *L. J., M. C.* 52.)

In an indictment under this section for secreting a post letter, it is not necessary to state the purpose for which the letter was secreted. (*Reg. v. Wynn*, 1 *Den. C. C.* 365; 18 *L. J., M. C.* 51.)

It was the duty of a letter carrier in the service of the post office, in case there were any letters which from any cause he was unable to de-

liver, to bring them back to the post office on his return from delivery. A letter containing coin, which was sorted to him for delivery, was not delivered at its destination. He did not return it to the post office, or give any account of it, but shortly after, on being asked why he had not delivered it, he produced it from his pocket unopened and with the coin safe within it. He gave an untrue reason for not having delivered it, and said he intended to do so at a later period of the day. The jury found that he detained this letter with the intention of stealing it: held, that he was guilty of larceny. (*Reg. v. Poynton*, 32 *L. J.*, *M. C.* 29; 1 *L. & C.*, *C. C.* 247.)

The secreting, by a letter carrier, of a letter written by an inspector of the post office for the purpose of trying the defendant's honesty, was held not to be a stealing of a post letter within the statute; but it was held that he might be convicted of simple larceny, in stealing a sovereign enclosed by the inspector in such letter, the sovereign being one of those which are occasionally found on the floor of the post office, having dropped out of letters, and which are carried to a fund which is under the direction of the postmaster-general; and that such sovereign might be described as the property of the postmaster-general. (*Reg. v. Rathbone*, 1 *C. & Mar.* 220.)

Where a servant who was sent with a letter, and a penny to pay the postage, finding the door of the receiving-house shut, put the penny inside the letter, fastening it by means of a pin, and then put the letter into the unpaid letter-box; it was held that a messenger in the post office, who stole this letter with the penny in it, might be convicted of stealing a post letter containing money, though the money was not put in for the purpose of being conveyed by post to the person to whom the letter was addressed. (*Reg. v. Mence*, *Id.* 234.) But secreting a letter in order to obtain the postage, was held not a secreting within the 52 Geo. 3, c. 143, if the object was to deliver the letter and embezzle the postage. (*R. v. Sharpe*, *R. & M. C. C.* 125.) Probably, however, this might be held an offence under the above section.

A person employed in the post office committed a mistake in the sorting of two letters containing money, and he threw the letters unopened, and the money, down a water-closet, in order to avoid a penalty attached to such mistakes: held, that there was a larceny of the letters and money, and also a secreting of the letters within the above section. (*Reg. v. Wynn*, 2 *C. & K.* 859; 1 *Den. C. C. R.* 365; 18 *L. J.*, *M. C.* 51.)

Sect. 27. That every person who shall steal from or out of a post letter any chattel, money, or valuable security, shall be guilty of felony, and shall be transported beyond the seas for life.

Stealing money, etc., out of letters.

It will be observed that this enactment in express terms, unlike the former enactments on the subject, makes it a felony in any person who may commit the offence. (See *R. v. Brown*, *R. & R.* 32; *R. v. Salisbury*, 5 *C. & P.* 155; overruling *R. v. Scutt*, 1 *Leach*, 106; *R. v. Pooley*, *R. & R.* 31.)

As to what is a valuable security within the Act, see sect. 47, *post*, 1313. A post office money order purporting to be signed by a local postmaster, and addressed to the Post Office, London, in the following form, "Credit the person named in my letter of advice the sum of £5, and debit the same to this office," was held by the judges to be both a warrant and order for the payment of money within the Act. (*Reg. v. Gilchrist*, 1 *Car. & M.* 224.)

Where the prisoner secreted a letter containing a draft not duly stamped, it was held not to be an offence within that Act, the draft not being available. (*R. v. Pooley*, *R. & R.* 12: 3 *B. & P.* 311, *S. C.*) But secreting a letter containing country bank notes, paid in London, and not re-issued, was held such offence; for they are available against the makers of them, into whosoever hands they come. (*R. v. Ranson*, *R. & R.* 232.)

Post Office.

A post office being at an inn, a person was sent to put a letter containing promissory notes, into the post. He took it to the inn with money to pre-pay the postage, he did not put it into the letter box, but laid the letter, and the money upon it, upon a table in the passage of the inn, in which passage the letter box was, and he pointed out the letter to the prisoner, who was a female servant at the inn, who said she would "give it to them." The prisoner, who was not authorized by the innkeeper, her master, to receive letters for him, stole the letter and its contents: held, that this was not a "post letter" within the 7 Will. 4 & 1 Vict. c. 36, ss. 27, 28, and that the stealing of the letter and its contents by the prisoner was not an offence within either of those sections. (*Reg. v. Harley*, 1 C. & K. 89.)

It has been held in an indictment under the 7 Geo. 2, c. 50, that a bill of exchange may be laid as a warrant for the payment of money. (*Willoughby's case*, 2 East, P. C. 581.)

The note or other security stolen in the letter might be described generally in the indictment. (2 East, P. C. 583.)

Stealing letters,
etc., sent by the
mail.

Sect. 28. That every person who shall steal a post letter bag, or a post letter from a post letter bag, or shall steal a post letter from a post office, or from any officer of the post office, or from a mail, or shall stop a mail with intent to rob or search the same, shall be guilty of felony, and shall be transported beyond the seas for life. (See the interpretation clause, sect. 47, *post*, 1313.)

Where the defendant obtained the mail bags from the post office, pretending that he was the mail guard, and then ran away with them; the jury being of opinion that he got possession of them with intent to steal them, found him guilty; and the judges held the conviction to be right. (*R. v. Pearce*, 2 East, P. C. 603.) Taking the mail bags off the horse during the momentary absence of the person employed to carry them, was holden to be taking from his possession, within the meaning of the repealed statute, 52 Geo. 3, c. 143. (*R. v. Robinson*, 2 Stark. 485 (a).)

It has been held that letters put into pigeon holes in a post office for private individuals, are still within the post office. On an indictment on the 52 Geo. 3, c. 143, for stealing letters from the post office at Liverpool, it appeared that at that post office there is a set of pigeon holes into which letters for certain merchants, who pay to the postmaster a guinea a year, were placed immediately on their arrival, and by this means those merchants were enabled to get those letters sooner than they otherwise would do; it was objected that as soon as the letters were deposited in the pigeon holes, they ceased to be in the post office, and, consequently, that the indictment for stealing from the post office could not be sustained, but the objection was overruled. (*Brett's case*, 1 Lew. 228.)

Stealing letters,
etc., sent by a
post office
packet.

Sect. 29. That every person who shall steal, or unlawfully take away, a post letter bag sent by a post office packet, or who shall steal or unlawfully take a letter out of any such bag, or shall unlawfully open any such bag, shall be guilty of felony, and shall be transported beyond the seas for any term not exceeding fourteen years. (See the interpretation clause, sect. 47, *post*, 1313.)

Receivers of property sent by the post, and stolen or embezzled.

Sect. 30. And with regard to receivers of property sent by the post and stolen therefrom, be it enacted, that every person who shall receive any post letter or any post letter bag, or any chattel or money or valuable security, the stealing or taking or embezzling or secreting whereof shall amount to a felony under the post office Acts, knowing the same to have been feloniously stolen, taken, embezzled, or secreted, and to have been sent or to have been intended to be sent by the post, shall in

England and Ireland be guilty of felony, and in Scotland of a high crime and offence, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable to be transported beyond the seas for life.

Sect. 31. And whereas post letters are sometimes by mistake delivered to the wrong person, and post letters and post letter bags are lost in the course of conveyance or delivery thereof, and are detained by the finders in expectation of gain or reward; be it therefore enacted, that every person who shall fraudulently retain, or shall wilfully secrete or keep or detain, or, being required to deliver up by an officer of the post office, shall neglect or refuse to deliver up a post letter which ought to have been delivered to any other person, or a post letter bag or post letter which shall have been sent, whether the same shall have been found by the person secreting, keeping, or detaining, or neglecting or refusing to deliver up the same, or by any other person, shall in England and Ireland be guilty of a misdemeanour, and in Scotland of a crime and offence, and being convicted thereof shall be liable to be punished by fine and imprisonment. This enactment seems to have been intended to meet the case of *R. v. Mucklow*, 1 *Moody*, C. C. 160.

Fraudulently retaining, after delivery thereof by mistake, letters or packets, and wilfully secreting or detaining letters, etc., that have been lost.

Sect. 32. And for the protection of printed votes and proceedings in Parliament and printed newspapers sent by the post, be it enacted, that every person employed in the post office who shall steal, or shall for any purpose embezzle, secrete, or destroy, or shall wilfully detain or delay in course of conveyance or delivery thereof by the post, any printed votes or proceedings in Parliament, or any printed newspaper, or any other printed paper whatever sent by the post without covers, or in covers open at the sides, shall in England and Ireland be guilty of a misdemeanour, and in Scotland of a crime and offence, and being convicted thereof shall suffer such punishment by fine or imprisonment, or by both, as to the Court shall seem meet.

Stealing, etc., any printed votes or proceedings in Parliament, newspaper or other printed paper.

Sect. 33. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, the name or handwriting of the receiver-general for the time being of the General Post Office in England or Ireland, or of any person employed by or under him, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining of any money in the hands or custody of the governor and company of the Bank of England or Ireland on account of the receiver-general of the post office, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any draft, warrant, or order of such receiver-general, or of any person employed by or under him, for money or for payment of money, with intent to defraud any person whomsoever, shall be guilty of felony, and being convicted thereof shall be transported beyond the seas for life.

Forging the handwriting of receiver-general.

Sect. 34. This section made the forging or altering of franks a felony punishable with transportation for seven years, but franking is now abolished by the 3 & 4 Vict. c. 96, s. 56.

Franking.

Sect. 35. That in the case of every felony punishable under the post office Acts, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by the post office Acts punishable; and every accessory after the fact to any felony punishable under the post office Acts (except only a receiver of any property or thing stolen, taken, embezzled, or secreted), shall, on conviction, be liable to be imprisoned for any term

Principal in the second degree, and accessories, how to be punished.

Post Office.

not exceeding two years ; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under the post office Acts shall be liable to be indicted and punished as a principal offender.

Endeavouring to procure the commission of any felony or misdemeanour.

Sect. 36. That every person who shall solicit or endeavour to procure any other person to commit a felony or misdemeanour punishable by the post office Acts shall in England and Ireland be guilty of a misdemeanour, and in Scotland of a crime and offence, and being thereof convicted shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years.

Venue.

Sect. 37. And for the more effectual prosecution of offences committed against the post office Acts, be it enacted, that the offence of every offender against the post office Acts may be dealt with, and indicted and tried and punished, and laid and charged to have been committed in England and Ireland, either in the county or place where the offence shall be committed, or in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place, and if committed in Scotland either in the high Court of judicary at Edinburgh, or in the circuit Court of judicary to be holden by the lords commissioners of judicary within the district where such offence shall be committed, or in any county or place within which such offender shall be apprehended or be in custody, as if his offence had been actually committed there ; and where an offence shall be committed in or upon or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter bag or post letter, or in respect of a post letter bag or post letter, or a chattel or money or valuable security sent by the post, such offence may be dealt with and inquired of, and tried and punished, and laid and charged to have been committed, as well in any county or place in which the offender shall be apprehended or be in custody, as also in any county or place through any part whereof the mail, or the person, or the post letter bag or the post letter, or the chattel, or the money, or the valuable security sent by the post in respect of which the offence shall have been committed, shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had been actually committed in such county or place ; and in all cases where the side or the centre or other part of a highway, or the side, the bank, the centre, or other part of a river, or canal, or navigation, shall constitute the boundary of two counties, such offence may be dealt with and inquired of, and tried and punished, and laid and charged to have been committed in either of the said counties through which or adjoining to which or by the boundary of any part of which the mail or person shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had actually been committed in such county or place ; and every accessory before or after the fact to any such offence, if the same be a felony or a high crime, and every person aiding or abetting or counselling or procuring the commission of any such offence, if the same be a misdemeanour, may be dealt with, indicted, tried, and punished as if he were a principal, and his offence laid and charged to have been committed in any county or place in which the principal offender may be tried.

Accessories in felony, and persons aiding and counselling in misdemeanour.

Sect. 38 relates to bail in Scotland.

Admiralty jurisdiction.

Sect. 39. That where an offence punishable under the Post Office Acts shall be committed within the jurisdiction of the admiralty the same shall be dealt with and inquired of and tried and determined in the same manner as any other offence committed within that jurisdiction (a).

(a) See Vol. I., tit. "Admiralty."

Sect. 40. That in every case where an offence shall be committed in respect of a post letter bag or a post letter, or a chattel, money, or a valuable security, sent by the post, it shall be lawful to lay in the indictment or criminal letters to be preferred against the offender the property of the post letter bag or of the post letter, or chattel or money or the valuable security sent by the post, in the postmaster-general; and it shall not be necessary in the indictment or criminal letters to allege or to prove upon the trial or otherwise that the post letter bag or any such post letter or valuable security was of any value; and in any indictment or in any criminal letters to be preferred against any person employed under the post office for any offence committed against the Post Office Acts it shall be lawful to state and allege that such offender was employed under the post office of the United Kingdom at the time of the committing of such offence, without stating further the nature or particulars of his employment.

Post Office.

Property sent by the post to be laid in the postmaster general.

Proof of value.

Statement of employment.

Sect. 41. That every person convicted of any offence for which the punishment of transportation for life is herein awarded shall be liable to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and every person convicted of any offence punishable according to the post office Acts by transportation for fourteen years shall be liable to be transported for any term not exceeding fourteen years nor less than seven years, or to be imprisoned for any term not exceeding three years.

Punishment.

Sect. 42. That where a person shall be convicted of an offence punishable under the post office Acts for which imprisonment may be awarded the Court may sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and may also direct that he shall be kept in solitary confinement for the whole or any portion of such imprisonment as to the Court shall seem meet.

Power to award hard labour or solitary confinement.

Sect. 43. That as often as any sum or sums of money not exceeding £20 shall be due for postage from any person within the United Kingdom or other her Majesty's dominions, or which shall be due for postage from any deputy, agent, or letter carrier, or any other person employed in receiving or collecting the postage of letters or any of the post office revenue, or from the sureties of any such last-mentioned person, a complaint may be made to one or more of her Majesty's justices acting for the place (whether county, riding, division, city, town, or other place), and thereupon he shall summon the party complained of, and the witnesses on either side, and shall examine into the matter of fact; and on due proof being made of the money due from the person complained of, either by his voluntary confession, or by the oath of one witness or more, the justice shall grant a warrant to a peace officer (whether constable, tithing man, or other peace officer) of the same place to distrain the party complained of by his goods and chattels to the amount of the debt and of all the expenses (whether costs, charges, or otherwise, of obtaining such warrant, and of the proceedings relating thereto, and to the making of the distress and sale thereof); and the constable having taken the distress may keep it for five days at the charge of the party complained of, and if the amount of the debt and all the expenses shall not be paid within that time, then the goods and chattels distrained shall be sold by the peace officer, and the surplus (if any) of the money arising by the sale thereof, after deducting the amount of the debt and all the expenses, shall be rendered by the peace officer to the person distrained upon; and for the purpose of taking such distress the peace officer, when either a refusal or a resistance shall be made, may break open in the daytime any place (whether house, building, or otherwise) where any goods or chattels of such person shall be; and if no sufficient distress can be had whereon to levy the debt and expenses, or in case an insufficient distress

Distress for recovery of sums not exceeding £20.

Post Office.

only can be found, or if an insufficient distress has been sold, then a justice of the peace may commit such person to the prison of the place, there to remain until the debt and all expenses, or so much thereof as shall remain after deducting therefrom the proceeds of the sale, shall be satisfied; and in addition to the above proceedings, if the postage due from any officer of the post office, surety, or any other person in Ireland shall not exceed £50, the same may be recovered with full costs in a summary way by process or civil bill in the Court of the district where the person sued shall reside which has jurisdiction to try matters on civil bill; but no decree shall be made thereon unless process or civil bill shall have been served on the person sued eight clear days at least before the first day of the quarter sessions at which it is to be tried; and if the person sued shall appeal from the decree made thereon against him, and on the hearing of the appeal the decree shall be affirmed, he shall pay to her Majesty double the costs of the original decree, and the affirmance thereof shall be conclusive on all the parties therein.

In what way
duties of postage
may be sued for.

Sect. 44. That all duties of postage granted by any of the post office Acts, and charged by virtue thereof, may be sued for and recovered by suit, action, or information in any of her Majesty's Courts of record, and by all such ways and means and in such manner and form as any other duties granted to her Majesty by any Act or Acts relating to her Majesty's revenue are recoverable by law, as well as by the particular ways and means provided by this Act; and in all actions, bills, plaints, informations, and proceedings to be commenced, prosecuted, entered, or filed in the name or on behalf of her Majesty for the recovery of any such duties, her Majesty may have and recover such duties, with full costs of suit.

Forms of conviction, etc.

Sect. 45. That every complaint, information, summons, conviction, warrant of distress, or commitment or other such proceeding which shall be had or taken for the recovery of any postage debt or penalty under the provisions of the Post Office Acts, may be drawn or made out according to the several forms contained in the schedule hereunto annexed, or to the effect thereof, with such changes therein as the case shall require; and every such complaint, information, summons, conviction, warrant, or other such proceeding which shall be so drawn or made out shall be good and effectual to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner than is required in and by such forms respectively.

Mode of proceeding in actions.

Sect. 46. And for the protection of persons acting in the execution of the post office Acts, be it enacted, that all legal proceedings, whether by action or by prosecution, which shall be commenced against any person for anything done in pursuance of or under the post office Acts, shall be commenced and prosecuted within three calendar months next after the commission of the act, and not afterwards; and such proceedings shall be laid and tried in the county or place where the cause of action shall arise, and not elsewhere; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in the following cases the defendant shall recover his full costs of suit as between attorney and client, that is to say, if a verdict shall pass for the defendant, or if the plaintiff shall become nonsuit, or if the plaintiff shall discontinue the action, or if on demurrer or otherwise judgment shall be given against the plaintiff; and the defendant shall have the like remedy for his costs as any defendant may have for costs of suits in other cases at law; and although a verdict shall be given for the plaintiff in any such action the plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be had shall at the time of such trial certify in writing his approbation of the action, and of the verdict obtained thereupon.

Post Office.

Sect. 47. And for the interpretation of the post office laws, be it enacted, that the following terms and expressions shall have the several interpretations hereinafter respectively set forth, unless such interpretations are repugnant to the subject or inconsistent with the context of the provisions in which they may be found; (that is to say,) the term "British letter" shall mean a letter transmitted within the United Kingdom; and the term "British newspapers" shall mean newspapers printed and published in the United Kingdom liable to the stamp duty and duly stamped; and the term "British postage" shall mean the duty chargeable on letters transmitted by post from place to place within the United Kingdom, or if transmitted to or from the United Kingdom, chargeable for the distance which they shall be transmitted within the United Kingdom, and including also the packet postage, if any; and the term "colonial letter" shall mean a letter transmitted between any of her Majesty's colonies and the United Kingdom; and the term "colonial newspapers" shall mean newspapers printed and published in any of her Majesty's dominions out of the United Kingdom; and the term "convention posts" shall mean posts established by the postmaster-general under agreements with the inhabitants of any places; and the term "double letter" shall mean a letter having one inclosure; and the term "double postage" shall mean twice the amount of single postage; and the term "East Indies" shall mean every port and place within the territorial acquisitions now vested in the East India Company in trust of her Majesty, and every other port or place within the limits of the charter of the said company (China excepted), and shall also include the Cape of Good Hope; and the term "express" shall mean every kind of conveyance employed to carry letters on behalf of the post office other than the usual mail; and the term "foreign country" shall mean any country, state, or kingdom not included in the dominions of her Majesty; and the term "foreign letter" shall mean a letter transmitted to or from a foreign country; and the term "foreign newspapers" shall mean newspapers printed and published in a foreign country in the language of that country; and the term "foreign postage" shall mean the duty charged for the conveyance of letters within such foreign country; and the term "franking officer" shall mean the person appointed to frank the official correspondence of offices to which the privilege of franking is granted; and the term "her Majesty" shall mean "her Majesty, her heirs, and successors;" and the term "her Majesty's colonies" shall include every port and place within the territorial acquisitions now vested in the East India Company in trust for her Majesty, the Cape of Good Hope, the islands of Saint Helena, Guernsey, Jersey, and Isle of Man (unless any such places be expressly excepted), as well as her Majesty's other colonies and possessions beyond seas; and the term "inland postage" shall mean the duty charged for the transmission of post letters within the limits of the United Kingdom or within the limits of any colony; and the term "letter" shall include packet, and the term "packet" shall include letter; and the expression "lord lieutenant of Ireland" shall mean the chief governor or governors of Ireland for the time being; and the expression "lords of the treasury" shall mean the lord high treasurer of the United Kingdom of Great Britain and Ireland, or the lords commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them; and the term "mail" shall include every conveyance by which post letters are carried, whether it be a coach or cart or horse, or any other conveyance, and also a person employed in conveying or delivering post letters, and also every vessel which is included in the term packet boat; and the term "mail bag" shall mean a mail of letters, or a box, or a parcel, or any other envelope in which post letters are conveyed, whether it does or does not contain post letters; and the term "master of a vessel" shall include any person in charge of a vessel, whether commander, mate, or other person, and whether the vessel be a ship of war or other vessel; and the expression

Interpretation clause.
British letter.
British newspapers.
British postage.
Colonial letter.
Colonial newspapers.
Convention posts.
Double letter.
Double postage.
East Indies.
Express.
Foreign country.
Foreign letter.
Foreign newspapers.
Foreign postage.
Franking officer.
Her Majesty.
Her Majesty's colonies.
Inland postage.
Letter. Packet.
Lord-lieutenant of Ireland.
Lords of the treasury.
Mail.
Mail bag.
Master of a vessel.

*Post Office.*Officer of the
post office.

Packet postage.

Packet letter.

Penalty.

Persons em-
ployed by the
post office.

Packet boats.

Post office
packets.

Postage.

Post town.

Post letter bag.

Post letter.

Post office.

Postmaster-
general.Post office Acts.
Post office laws.

Ships.

Single postage.

Single letter.

Sea postage.

Ship letter.

Treble letter.

Treble postage.

Treble the duty
of postage.

United Kingdom.

Valuable secu-
rity.

" officer of the post office " shall include the postmaster-general, and every deputy postmaster, agent, officer, clerk, letter carrier, guard, post boy, rider, or any other person employed in any business of the post office, whether employed by the postmaster-general, or by any person under him or on behalf of the post office; and the term " packet postage " shall mean the postage chargeable for the transmission of letters by packet boats between Great Britain and Ireland, or between the United Kingdom and any of her Majesty's colonies, or between the United Kingdom and foreign countries; and the term " packet letter " shall mean a letter transmitted by a packet boat; and the term " penalty " shall include every pecuniary penalty or forfeiture; and the expression " persons employed by or under the post office " shall include every persons employed in any business of the post office according to the interpretation given to officer of the post office; and the terms " packet boats " and " post office packets " shall include vessels employed by or under the post office or the admiralty for the transmission of post letters, and also ships or vessels (though not regularly employed as packet boats) for the conveyance of post letters under contract and also a ship of war or other vessel in the service of her Majesty, in respect of letters conveyed by it; and the term " postage " shall mean the duty chargeable for the transmission of post letters; and the term " post town " shall mean a town where a post office is established (not being a penny or twopenny or convention post office); and the term " post letter bag " shall include a mail bag or box, or packet or parcel, or other envelope or covering in which post letters are conveyed, whether it does or does not contain post letters; and the term " post letter " shall mean any letter or packet transmitted by the post under the authority of the postmaster-general, and a letter shall be deemed a post letter from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed; and the delivery to a letter carrier or other person authorized to receive letters for the post shall be a delivery to the post office; and a delivery at the house or office of the person to whom the letter is addressed, or to him, or to his servant or agent or other person considered to be authorized to receive the letter according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed; and the term " post office " shall mean any house, building, room, or place where post letters are received or delivered, or in which they are sorted, made up, or dispatched; and the term " postmaster-general " shall mean any person or body of persons executing the office of postmaster-general for the time being, having been duly appointed to the office by her Majesty; and the terms " post office Acts " and " post office laws " shall mean all Acts relating to the management of the post, or to the establishment of the post office, or to postage duties, from time to time in force; and the term " ships " shall include vessels other than packet boats; and the term " single postage " shall mean the postage chargeable for a single letter; and the term " single letter " shall mean a letter consisting of one sheet or piece of paper, and under the weight of an ounce; and the term " sea postage " shall mean the duty chargeable for the conveyance of letters by sea by vessels not packet boats; and the term " ship letter " shall mean a letter transmitted inwards or outwards over seas by a vessel not being a packet boat; and the term " treble letter " shall mean a letter consisting of more than two sheets or pieces of paper, whatever the number, under the weight of an ounce; and the term " treble postage " shall mean three times the amount of single postage; and the term " treble the duty of postage " shall mean three times the amount of the postage to which the letter to be charged would otherwise have been liable according to the rates of postage chargeable on letters; and the term " United Kingdom " shall mean the United Kingdom of Great Britain and Ireland; and the term " valuable security " shall include the whole or any part of any tally, order, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share

or interest in any public stock or fund, whether of this kingdom or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, or to any deposit in any savings bank, or the whole or any part of any debenture, deed, bond, bill, note, warrant, or order or other security whatsoever for money or for payment of money, whether of this kingdom or of any foreign state, or of any warrant or order for the delivery or transfer of any goods or valuable thing; and the term "vessel" shall include any ship or other vessel not a post office packet; and whenever the term "between" is used in reference to the transmission of letters, newspapers, parliamentary proceedings, or other things between one place and another, it shall apply equally to the transmission from either place to the other; and every officer mentioned shall mean the person for the time being executing the functions of that officer; and whenever in this Act or the schedules thereto, with reference to any person or matter or thing, or to any persons, matters, or things, the singular or plural number or the masculine gender only is expressed, such expression shall be understood to include several persons or matters or things as well as one person or matter or thing, and one person, matter, or thing as well as several persons or matters or things, females as well as males, bodies politic or corporate as well as individuals, unless it be otherwise specially provided, or the subject or context be repugnant to such construction.

Vessel.
Between.

Sect. 48. That this Act shall extend to and be in force in the islands of Man, Jersey, Guernsey, Sark, and Alderney, and in all her Majesty's colonies and dominions where any post or post communication is established by or under the postmaster-general of the United Kingdom of Great Britain and Ireland.

Where provisions of Act shall extend to.

See the schedule of forms, *post*, 1319.

The 3 & 4 Vict. c. 96 is an Act passed for reducing and regulating the duties of postage, the 68th section of which repeals the former Acts on that subject. It came into force on the 1st of September, 1840.

3 & 4 Vict. c. 96.

The only provisions in the Act which it is thought proper to notice in this work as coming within its objects, are the following:—

Sect. 22 enacts, that if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any die, plate, or other instrument, or any part of any die, plate, or other instrument, which hath been or shall or may be provided, made, or used by or under the direction of the commissioners of stamps and taxes, or by or under the direction of any other person or persons legally authorized in that behalf, for the purpose of expressing or denoting any of the rates or duties which are or shall be directed to be charged under or by virtue of the authority contained in the said recited Act of the last session of Parliament or under or by virtue of this Act; or if any person shall forge, counterfeit, or imitate, or cause or procure to be forged, counterfeited, or imitated, the stamp, mark, or impression, or any part of the stamp, mark, or impression, of any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, upon any paper or other substance or material whatever; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument resembling or intending to resemble either wholly or in part any die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid; or if any person shall stamp or mark, or cause or procure to be stamped or marked, any paper, or other substance or material whatsoever, with any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid; or if any person shall use, utter, sell, or expose to sale, or cause or procure to be used, uttered, sold, or exposed to sale, or shall knowingly and

Forging or fraudulently using dies or plates.

Post Office.

without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any paper, or other substance or material, having thereon the impression or any part of the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument, as aforesaid, or having thereon any false, forged, or counterfeit stamp or impression, resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for the stamp, mark, or impression of any such die, plate, or other instrument, which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged or counterfeit stamp, mark, or impression to be false, forged, or counterfeit; or if any person shall, with intent to defraud her Majesty, her heirs or successors, privately or fraudulently use, or cause or procure to be privately or fraudulently used, any die, plate, or other instrument so provided, made, or used, or hereafter to be provided, made, or used as aforesaid, or shall with such intent privately or fraudulently stamp or mark, or cause or procure to be stamped or marked, any paper or other substance or material whatsoever with any such die, plate, or other instrument as last aforesaid; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any paper or other substance or material so privately or fraudulently stamped or marked as aforesaid; then and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the Court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years, as the Court shall award.

For punishing
evasion of duties.

Sect. 23. That if any person shall fraudulently get off or remove, or cause or procure to be gotten off or removed, from any letter or cover or any paper or other substance or material, the stamp or impression of any die, plate, or other instrument so provided, made, or used, or hereafter to be provided, made, or used as aforesaid, with intent to use, join, fix, or place such stamp or impression for, with, or upon any other letter, cover, paper, or other substance or material; or if any person shall fraudulently use, join, fix, or place for, with, or upon any letter or cover, or any paper or other substance or material, any such stamp or impression as aforesaid which shall have been gotten off or removed from any other letter, cover, paper, or other substance or material; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from, or shall cause or procure to be so erased, cut, scraped, discharged, or gotten out of or from any letter or cover, or any paper, or other substance or material, any name, date, or other matter or thing thereon written, printed, or expressed with intent to use any stamp or mark then impressed or being upon such letter or cover, paper, or other substance or material, or that the same may be used for the purpose of defrauding her Majesty, her heirs or successors, of any of the rates or duties aforesaid; or if any person shall make, do, or practise or be concerned in any other fraudulent act, contrivance, or device whatever, not specially provided for by this or some other Act of Parliament, with intent or design to defraud her Majesty, her heirs or successors, of any of the rates or duties aforesaid; every person so offending in any of the several cases in this clause mentioned shall forfeit and pay to her Majesty, or her heirs and successors, the sum of £20, to be recovered with full costs of suit and all expenses attending the same.

Punishing persons manufacturing or using paper similar to that used for postage covers.

Sect. 29. That if any person shall make, or cause or procure to be made, or shall aid or assist in the making, or shall knowingly have in his custody or possession, not being legally authorized by the commissioners of excise, or other person or persons appointed by the commissioners of her Majesty's treasury, and without lawful excuse (the proof

whereof shall lie on the person accused), any mould or frame or other instrument having therein any words, letters, figures, marks, lines, or devices peculiar to and appearing in the substance of any paper heretofore or hereafter to be provided or used for postage covers, envelopes, or stamps, or any machinery or parts of machinery for working any threads into the substance of any paper or any such thread, and intended to imitate or pass for such words, letters, figures, marks, lines, threads, or devices; or if any person except as before excepted, shall make, or cause or procure to be made, or aid or assist in the making, of any paper in the substance of which shall be worked or shall appear visible any words, letters, figures, marks, lines, threads, or other devices peculiar to and worked into or appearing visible in the substance of any paper heretofore or hereafter to be provided or used for postage covers, envelopes, or stamps, or any part of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate or pass for the same; or if any person, except as before excepted, shall knowingly have in his custody or possession, without lawful excuse (the proof whereof shall lie on the person accused), any paper whatever, in the substance whereof shall be worked or appear visible any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads, or devices, and intended to imitate or pass for the same; or if any person, except as aforesaid, shall by any art, mystery, or contrivance, cause or procure, or aid or assist in causing or procuring, any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate or pass for the same, to appear worked into or visible in the substance of any paper whatever, then and in every such case every person so offending shall for every such offence be adjudged a felon, and shall be transported for the term of seven years, or shall be imprisoned, at the discretion of the Court before whom such person shall be tried, for any period not less than two years.

Sect. 30. That if any person not lawfully authorized, and without lawful excuse (the proof whereof shall lie on the person accused), shall purchase or receive, or take or have in his custody or possession, any paper manufactured and provided by or under the directions of the commissioners of excise, or other person or persons appointed to provide the same by the commissioners of her Majesty's treasury for the purpose of being used for postage covers, envelopes, or stamps, and for receiving the impression of the dies, plates, or other instruments provided, made, or used under the directions of the commissioners of stamps and taxes, or other person or persons legally authorized in that behalf, before such paper shall have been duly stamped with such impression and issued for public use, every such person shall for such offence be guilty of a misdemeanour, and being convicted thereof shall, at the discretion of the Court before whom such person shall be tried, be imprisoned for any period not more than three years nor less than six calendar months.

Receiving or having in possession paper provided for postage covers or stamps, before being stamped and issued for use.

Sect. 32. That the foreign postage marked on any letter or newspaper, or other printed paper brought into the United Kingdom, shall in all Courts of justice and other places be received as conclusive evidence of the amount of foreign postage payable in respect of such letter, newspaper, or other printed paper, in addition to the British postage; and such foreign postage shall be recoverable within the United Kingdom and other her Majesty's dominions as postage due to her Majesty.

Postage marked on foreign letters to be evidence of amount of postage.

Though the post office marks in town or country, proved to be such, are evidence that the letters on which they appear were in the office to which those marks belong at the dates which they specified, yet a mark of double postage having been paid on a letter is not of itself evidence that the letter contained an enclosure. Upon a case reserved, the judges

Post Office.

held a conviction wrong, on the ground that there was not sufficient evidence of a double letter having been put into the post office, the clerk who put it into the office, paid the postage, and wrote "post paid 2s," not having been called. (*R. v. Plumer, R. & R. 264.*) See further as to evidence of letters sent by the post, tit. "*Evidence*," Vol. II.

Certain penalties under 7 Will. 4 & 1 Vict. c. 34 and c. 36, further extended.

Sect. 37. That the penalty which, by the 7 Will. 4 & 1 Vict. c. 36, is imposed on every master of a vessel outward bound to Ceylon, the Mauritius, the East Indies, or the Cape of Good Hope, who shall refuse to take a post letter bag delivered or tendered to him by an officer of the post office, shall henceforth extend and apply to the master of every vessel outward bound who shall refuse to take a post letter bag, delivered or tendered to him for conveyance by an officer of the post office; and that the penalty which, by the said Act of the first year of the reign of her present Majesty, is imposed on every master of a vessel who shall refuse or wilfully neglect to make the declaration of having delivered his ship letters to the post office, as required by the 7 Will. 4 & 1 Vict. c. 34, shall henceforth extend and apply to the master of every vessel who shall refuse or wilfully neglect to make the declaration of having delivered his ship's letters to the post office, as is required by this Act, and that the penalty by the said first-mentioned Act imposed on every collector, comptroller, or officer, of the customs, who by the said last-mentioned Act is required to prohibit any vessel reporting until the requisites of such last-mentioned Act shall have been complied with, and who shall permit such vessel to report before the requisites of such Act shall have been complied with, shall henceforth extend and apply to every collector, comptroller, or officer of the customs, who by this Act is required to prohibit any vessel reporting until the requisites of this Act have been complied with, and who shall permit such vessel to report before the requisites of this Act shall have been complied with.

Examination of printed papers, etc.

Sect. 45. That the postmaster-general may examine any printed paper or any packet which shall be sent by the post, without a cover or in a cover open at the sides, in order to discover whether it is contrary in any respect to the conditions hereby required to be observed, or to any regulations which the postmaster-general, with the consent of the commissioners of her Majesty's treasury, may from time to time make in respect of any paper or packet of such a description, and also, in the case of newspapers, to ascertain in what language the newspapers brought into the United Kingdom from any foreign country shall be printed and published; and also in order to discover whether the newspapers printed and published in the United Kingdom (excepting those printed in Guernsey, Jersey, Alderney, Sark, or Man, which, for the purposes of this Act, are to be considered as part of the United Kingdom) are duly stamped; and in case any one of the required conditions has not been fulfilled, the whole of every such paper or packet shall be charged with treble the duty of the postage to which it would have been liable as a letter, except as to foreign newspapers not printed in the language of the country from which they shall have been forwarded, which shall be charged with full postage as letters; and as to every such printed paper going out of the United Kingdom, the postmaster-general may either detain the paper or forward the same by the post, charged with treble the duty of postage to which it would have been liable as a letter; and in case a newspaper printed in the United Kingdom (except as aforesaid), and transmitted by the post under this Act, shall appear not to have been duly stamped, the same shall be stopped and sent to the commissioners of stamps and taxes.

Combustibles not to be sent by post.

Sect. 62. That no person shall post or cause to be posted, or sent or cause to be sent, or tender or deliver in order to be sent by the post, any letter containing any explosive or other dangerous material or substance, and no such letter shall be forwarded by the post.

Sect. 66. And for the more effectual prosecution of offences committed against the post office, be it enacted, that in any indictment or criminal letters for any offence committed upon or in respect of any property which may be laid in or stated to belong to the postmaster-general, it shall be sufficient to state any such property to belong to and to lay it in "her Majesty's postmaster-general;" and it shall not be necessary to specify the name or addition of any such postmaster-general; and that whenever, in any indictment or criminal letters for any offence committed against the post office Acts, it shall be necessary to mention for any purpose whatever her Majesty's postmaster-general, it shall be sufficient to describe such postmaster-general as "her Majesty's postmaster-general," without any further or other name, addition, or description whatsoever.

Post Office.

For prosecution of offences.

Sect. 67. And to enable the postmaster-general for the time being to hold and take conveyances and leases of messuages, tenements, lands, and hereditaments for the service of the post office, and to transmit the same to his successors, be it enacted, that for such purpose her Majesty's postmaster-general and his successors shall be and is and are hereby made a body corporate, and shall have a seal; and that all messuages, tenements, lands, and hereditaments, of whatsoever nature and tenure, now vested in her Majesty's present postmaster-general, his heirs, executors, administrators, and assigns, in trust for her Majesty and her successors, shall immediately on the passing of this Act be and become vested in him in his corporate capacity, and his successors for ever, in trust as aforesaid.

Postmaster-general to be a body corporate.

By 11 & 12 Vict. c. 88, which regulates the issue of money orders, it is enacted (sect. 4), that every officer of the post office who shall grant or issue any money order with a fraudulent intent shall in England and Ireland be guilty of felony, and in Scotland of a high crime and offence, and shall at the discretion of the Court either be transported beyond the seas for the term of seven years, or be imprisoned for any term not exceeding three years.

Penalty on officers of post office issuing money orders with fraudulent intent.

Sect. 5. In any indictment or criminal letters for any felony or misdemeanour committed, or attempted to be committed, in upon, or with respect to the post office, or the post office revenue, or in, upon or with respect to any property, moneys, money orders, goods, chattels, or effects, under the management or control of the postmaster-general, or where any act, matter or thing shall have been done or committed by any person with or for any malicious, injurious or fraudulent design, intent or purpose, in anywise relating to or concerning the post office, or the post office revenue, or any such property, moneys, money orders, goods, chattels or effects as aforesaid, or the postmaster-general, it shall be sufficient to lay any such property in, and to state or allege the same to belong to, and to state or allege any such act, matter or thing to have been done or committed with intent to injure or defraud "her Majesty's postmaster-general;" and in all indictments and criminal letters relating to, or in anywise concerning the department of the post office, it shall be sufficient to name and describe the postmaster-general as "her Majesty's postmaster-general," without any further or other name, addition or description whatsoever.

In indictments it shall be sufficient to name "her Majesty's postmaster-general."

SCHEDULE to the 1 VICT. c. 36.

County [or as the } Be it remembered, that on the day of
case may be] of } in the year of our Lord at
to wit. } in the of A. B., etc. [or A. B.,
an officer of the post office, as the case may be], cometh before me, C. D., esquire,
one of her Majesty's justices of the peace for the said and in-

(1.) Form of an information for the recovery of a penalty under this Act.

Post Office. formeth me the said justice that E. F. of heretofore, to wit, on
 the day of in the year of our Lord
Schedule. at in the said did [here state the offence], con-
 trary to the form of the statute in such case made and provided, whereby the
 said E. F. hath forfeited for his said offence the sum of

Taken and received by me the day
 and year first above written.

(2.) Form of a
 summons on the
 foregoing infor-
 mation.

To E. F. of, etc.

County [or as the } Whereas an information hath been exhibited before me,
 case may be] of } C. D., esquire, one of her Majesty's justices of the peace,
 to wit. } for the of charging that you
 the above-named E. F. on the day of at
 did [here state the substance of the charge], whereby you have forfeited the
 sum of . These are therefore to require you personally to be
 and appear before me the said justice, or before such other of her Majesty's
 justices of the peace for the said as shall be then present, at
 on the day of at the hour of
 in the noon of the same day, then and there to answer the same
 information, and to make your defence thereto; and if you fail to appear ac-
 cordingly, such proceedings will be taken as if you had personally appeared
 and had not made any defence to the said charge.

Given under my hand and seal this day of.

(3.) Form of a
 conviction on the
 foregoing infor-
 mation.

County [or as the } Be it remembered, that on the day of
 case may be] of } at E. F. of, etc., was duly convicted before
 to wit. } me one of her Majesty's justices of the peace
 for in pursuance of an Act passed in the first year of the reign
 of her Majesty Queen Victoria, intituled "An Act," etc. [title of this Act, ante,
 1298], for that the said E. F. on the day of did [here
 state the offence as the case may happen to be], contrary to the form of the
 statute in that case made and provided; for which offence I do adjudge that the
 said E. F. hath forfeited the sum of and [if the justice mitigate the
 penalty] which sum of I do hereby mitigate to the sum of
 over and above the sum of for the costs and
 charges of G. H. the informer, in prosecuting this conviction.

Given under my hand and seal the day of.

(4.) Form of a
 warrant of dis-
 tress founded on
 the foregoing
 conviction.

To the constable of

in the

of

County [or as the } Whereas E. F. of has been duly convicted of
 case may be] of } a certain offence, for [here state the offence as in conviction]
 to wit. } whereby he hath forfeited the sum of [and in
 case of mitigation, which hath been mitigated to the sum of] over
 and above the reasonable costs and charges of the informer, allowed and assessed at
 the sum of ; therefore I command you to levy the said sum of
 and also the said sum of for the costs and charges
 aforesaid, making together the sum of by distraining the goods and
 chattels of the said E. F.; and if within the space of five days next after such dis-
 tress taken the said sum of together with the reasonable costs and
 charges of taking and keeping such distress, shall not be paid, then I order and
 direct that you shall sell and dispose of the said goods and chattels which shall be
 so distrained, seized, and taken as aforesaid, and shall levy and raise thereout the
 said sum of and all reasonable costs and charges of taking and keeping
 and selling such distress, rendering the overplus, if any, to the owner of the said

goods and chattels ; and you are to certify to me what you shall have done by virtue of this my warrant.

Post Office.

Given under my hand and seal the

day of

Schedule.

(Signed)

One of her Majesty's justices of the peace
for the said of

To the constable of
house of correction] at

and to the keeper of the common gaol [or
in the said

County [or as the } Whereas E. F. of has been duly con-
case may be] of } victed of a certain offence, for that [here state the offence
to wit. } as in the conviction] whereby he hath forfeited the sum of
[and in case of mitigation, which hath been mitigated to the
sum of] over and above the reasonable costs and charges of the
informer, allowed and assessed at the sum of making together
the sum of : And whereas it has been duly made to appear to
me that no sufficient distress can be found whereon to levy the said sum of
; Therefore I command you the constable of to
apprehend and take the said E. F. and safely to carry him to the common gaol
[or house of correction] at in the of
and there to deliver him to the keeper thereof, together with this war-
rant ; and I do hereby command you the said keeper to receive into your custody
in the said gaol [or house of correction] him the said E. F., and him therein
safely to keep for the space of unless the said sum of
shall be sooner paid.

(5.) Form of a
warrant of com-
mitment for want
of a sufficient
distress founded
on the foregoing
conviction.

Given under my hand and seal the

day of

(Signed)

One of her Majesty's justices of the peace
for the said of

County [or as the }
case may be] of }
to wit. }

Be it remembered, that on this
in the year of our Lord
in the of

day of
at

A. B., an officer of the post office, complaineth to me, C. D., Esquire, one of
her Majesty's justices of the peace for the said that the sum of
is due and owing from E. F. of to her Ma-
jesty [or to the said A. B. if the case be so], for the duty of postage, which he
hath refused or neglected to pay ; and thereupon the said A. B. prayeth of me
the said justice that the said E. F. may be summoned to appear and show cause, if
any he have, why, due proof being made of the sum due and owing from him for
postage as aforesaid, a warrant of distress should not be granted for recovery
thereof, pursuant to the direction of the statute in that behalf made.

(6.) Form of a
complaint
whereon to found
a warrant of dis-
tress for reco-
very of postage.

Taken and received by me the day
year first above written.

and

To E. F. of

County [or as the }
case may be] of }
to wit. }

Whereas complaint has been made unto me, C. D.,
Esquire, one of her Majesty's justices of the peace for the
of that the sum

is due and owing from you to her Majesty [or to A. B., an officer of the post
office, if the case be so], for the duty of postage, which you have refused or neg-
lected to pay : These are therefore to summon you to be and appear at
in the said on the day of
at the hour of in the noon of the same day, be-

(7.) Form of sum-
mons on the
foregoing com-
plaint.

Post Office. fore me the said justice, or before such other of her Majesty's justices of the peace for the said as shall be then present, in order that you may show cause, if any you have, why, on due proof being made of the sum of money due and owing from you for such duty of postage as aforesaid, a warrant of distress should not be granted for the recovery thereof, pursuant to the directions of the statute in that behalf made; and if you fail to appear accordingly, such proceedings will be taken as if you had appeared, and had not shown any sufficient cause why such warrant should not be granted.

Given under my hand and seal this

day of

(8.) Form of a warrant of distress founded on the foregoing complaint.

To the constable of
may be.]

[or to C. D. of

as the case

County [or as the } Whereas complaint hath been made that E. F. of
case may be] of } is indebted to her Majesty [or to A. B., an
to wit. } officer of the post office, if the case be so], in the sum of
for the duty of postage, which he hath refused or neglected to
pay: And whereas the said E. F. hath been duly summoned, and due proof
hath been made on oath before me that the sum of is due and
owing from the said E. F. for such duty of postage as aforesaid, and that he
hath neglected to pay the same: Therefore I command you to distrain the said
E. F. by his goods and chattels, and to levy thereon the said last-mentioned sum,
being the amount of such duty of postage as aforesaid, and also the further sum
of for the costs, charges, and expenses of proceeding for and
obtaining this warrant, and of the proceedings incident and relating thereto,
making together the sum of , and if within the space of five days
next after the taking of such distress the sum of , together with
the reasonable costs and charges of taking and keeping such distress, shall not
be paid, then I do hereby order and direct that you shall sell and dispose of
the said goods and chattels which shall be so distrained, and that you shall levy
and raise thereout the said sum of , and all reasonable costs
and charges of taking, keeping, and selling such distress, rendering the overplus
(if any) to the owner of the said goods and chattels; and you are to certify to
me what you have done by virtue of this my warrant.

Given under my hand and seal this

day of

(Signed)

One of her Majesty's justices of the peace
for the said of

(9.) Form of a warrant of commitment for want of sufficient distress, founded on the foregoing complaint.

To the constable of in the of
and also to the keeper of the common gaol [or house of correction] at
in the said

County [or as the } Whereas complaint was made that E. F. of
case may be] of } was indebted to her Majesty [or to A. B., an officer of the
to wit. } post office, if the case be so], in the sum of
for the duty of postage, which he hath refused or neglected to pay: And
whereas the said E. F. was duly summoned, and due proof was made on oath
that the sum of was due and owing from the said E. F. for such duty of
postage as aforesaid, and that he hath neglected to pay the same: And whereas a
warrant has been issued directed to C. D. of commanding him,
by distress and sale of the goods and chattels of the said E. F., to levy the said
last-mentioned sum, being the amount of such duty of postage as aforesaid, due
and owing from the said E. F., and also the further sum of for
the costs, charges, and expenses of proceeding for and obtaining the said war-
rant, and of the proceedings incident and relating thereto, making together the
sum of ; and it now appearing to me by the oath of the said
C. D. that no sufficient distress can be found whereon to levy the said duty,
costs, and charges [or in case an insufficient distress shall have been taken,

And whereas the said C. D. hath certified to me that he hath under the said warrant levied and raised the sum of _____ only; and it now appearing to me by the oath of the said C. D. that no sufficient distress can be found whereon to levy the residue of the said duty, costs, and charges; Therefore I command you the said constable of _____ to apprehend and take the said E. F. and safely to convey him to the common gaol [or house of correction] of the said _____ at _____ in the said _____, and there to deliver him to the keeper thereof, together with this warrant; and I do hereby command you the said keeper to receive into your custody in the said gaol [or house of correction] him the said E. F., and him therein safely to keep until the said sum of _____ or until the sum of _____ the residue of the said duty, costs, and charges remaining after deducting the said sum of _____ so levied and raised as aforesaid, shall be fully paid and satisfied.

Given under my hand and seal this _____

day of _____

(Signed)

One of her Majesty's justices of the peace
for the said _____

Presentment.

A presentment may be that which the grand jury find and present to the Court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment. By grand jury.

The presentment is drawn up in English by the jury, in a short note, for instructions to draw the indictment by; upon which the officer of the Court must afterwards frame an indictment, before the party presented can be put to answer it; and it differs from an indictment, in that an indictment is drawn up at large, and brought engrossed to the grand jury to find. (2 *Lill. Abr.* 353; 2 *Inst.* 739.)

The grand jury may present any offence within their own knowledge without a bill being sent before them at the instance of an individual prosecutor, if the offence be one of which they can legally take cognizance. (2 *Hawk. c.* 2, s. 51.)

When a presentment is regularly made, the form of it, in describing the subject matter of the offence, is the same as in an indictment, for which see "*Indictment*," *ante*, 29. Form of presentment.

There are other presentments of churchwardens and constables, which may be seen under their proper titles. It seems from the case of *R. v. Bridgewater and Taunton Canal Company* (7 *B. & Cress.* 514; 1 *M. & R.* 81, *S. C.*) that presentments of constables are of no validity, unless the constable goes before the grand jury, and makes oath to the truth of the facts he presents. By constables, etc.

The 5 & 6 Will. 4, c. 50, s. 99, abolished presentments for the non-repair of highways or turnpike roads. Highways.

The following is a form of presentment by a grand jury:—

—shire } Be it remembered, that at a general quarter session of the
to wit. } peace of our lady the queen, holden at _____, for the
said county, on the _____ day of _____, in the said year of
the reign of, etc., before A. B. and C. D., Esquires, and the Rev. P. Q., clerk,
and others their companions, justices of our said lady the Queen, assigned, etc.,
Presentment by a grand jury.

Printers.

it is presented by the oath of M. N., O. P., Q. R., etc. [the names of the grand jurors], good and lawful men of the said county, then and there sworn and charged to inquire for our said lady the queen, and the body of the said county as followeth; that is to say, aforesaid, the jurors for our sovereign lady the queen, upon their oath present, that, etc. [here state the offence, and conclude as in an indictment].

Printers.

[39 Geo. 3, c. 79; 51 Geo. 3, c. 65; 2 & 3 Vict. c. 12.]

As to the printing and publishing of newspapers, pamphlets, and periodicals, see tit. "*Newspapers*," ante, 1013.

As to libels, see "*Libel*," ante, 328.

Printers to give a notice to clerk of peace, who is to grant a certificate, and file notice, and transmit a copy to secretary of state.

By the 39 Geo. 3, c. 79, intituled, "An Act for the more effectual Suppression of Societies established for Seditious and Treasonable Purposes; and for better preventing Treasonable and Seditious Practices;" sect. 23, after reciting, whereas many societies, established of late years for treasonable and seditious purposes, and especially the said societies of "United Englishmen," "United Scotchmen," "United Irishmen," and "United Britons," and the said society called the "London Corresponding Society," and other corresponding societies, have at various times caused to be published, in great quantities, divers printed papers of an irreligious, treasonable, and seditious nature, tending to revile our holy religion, and to bring the profession and worship thereof into contempt among the ignorant, and also to excite hatred and contempt of his Majesty's royal person, government, and laws, and of the happy constitution of these realms, as by law established, and utterly to eradicate all principles of religion and morality; and such societies have dispersed such printed papers among the lower classes of the community, either gratis, or at very low prices, and with an activity and profusion beyond all former example: and whereas all persons printing or publishing any papers or writings are by law answerable for the contents thereof, but such responsibility hath of late been in a great degree eluded by the secret printing and publishing of such seditious, immoral, and irreligious papers or writings as aforesaid, and it is therefore highly important to the public peace that it should in future be known by whom any such papers shall be printed, it is enacted, that, from and after the expiration of forty days from the day of passing this Act, any person having any printing press, or types for printing, shall cause a notice thereof [*post*, No. 2], signed in the presence of, and attested by one witness, to be delivered to the clerk of the peace acting for the county, stewardry, riding, division, city, borough, town, or place where the same shall be intended to be used, or his deputy, according to the form prescribed in the schedule hereunto annexed; and such clerk of the peace, or deputy respectively, shall, and he is hereby authorized and required to grant a certificate [*post*, No. 3], in the form prescribed in the schedule hereunto annexed, for which such clerk of the peace, or deputy, shall receive the fee of 1s., and no more, and such clerk of the peace, or his deputy, shall file such notice, and transmit an attested copy thereof, to one of his Majesty's principal secretaries of state; and every person who, not having delivered such notice, and obtained such certificate as aforesaid, shall, from and after the expiration of forty days next after the passing of this Act, keep or use any printing press or types for printing, or having delivered such notice, and obtained such certificate as aforesaid, shall use any

Penalty for keeping presses, etc., without notice, or using them in any place not expressed therein.

printing press or types for printing, in any other place than the place expressed in such notice, shall forfeit and lose the sum of £20.

Printers.

Sect. 24. Nothing herein contained shall extend to his Majesty's printers for England and Scotland, or to the public presses belonging to the universities of Oxford and Cambridge respectively.

Not to extend to king's printers, or the universities.

Sect. 25. From and after the expiration of forty days after the passing of this Act, every person carrying on the business of a letter-founder, or maker or seller of types for printing, or of printing presses, shall cause notice of his or her intention to carry on such business to be delivered to the clerk of the peace of the county, stewardry, riding, division, city, borough, town, or place where such person shall propose to carry on such business, or his deputy, in the form prescribed in the schedule to this Act annexed [*post*, No. 4]; and such clerk of the peace, or his deputy, shall, and is hereby authorized and required thereupon to grant a certificate in the form [*post*, No. 5], also prescribed in the said schedule, for which such clerk of the peace, or his deputy, shall receive a fee of 1s., and no more, and shall file such notice, and transmit an attested copy thereof to one of his Majesty's principal secretaries of state; and every person who shall, after the expiration of the said forty days, carry on such business, or make or sell any type for printing, or printing press, without having given such notice, and obtained such certificate, shall forfeit and lose the sum of £20.

Letter-founders and printing-press makers to give a notice to clerk of peace, who shall grant a certificate, and file notice, and transmit a copy to secretary of state.

Penalty for carrying on such businesses without notice.

Sect. 26. Every person who shall sell types for printing, or printing presses, as aforesaid, shall keep a fair account in writing of all persons to whom any such types or presses shall be sold, and shall produce such accounts to any justice of the peace who shall require the same; and if such person shall neglect to keep such account, or shall refuse to produce the same to any such justice, on demand in writing to inspect the same, such person shall forfeit and lose, for such offence, the sum of £20.

Account to be kept of types and printing-presses sold, and to be produced when required.

Sect. 27, which imposed a penalty for printing any paper or book without the name and abode of printer being printed on it, is repealed by the 2 & 3 Vict. c. 12, *post*, 1329, and another provision enacted in its stead.

Sect. 28. Nothing in this Act contained shall extend, or be construed to extend, to any papers printed by the authority and for the use of either house of Parliament.

Not to extend to papers printed by authority of Parliament.

Sect. 29. Every person who, from and after the expiration of forty days after the passing of this Act, shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit, who shall omit or neglect to write, or cause to be written or printed, as aforesaid, the name and place of his employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace, who, within the said space of six calendar months, shall require to see the same, shall, for every such omission, neglect, or refusal, forfeit and lose the sum of £20.

Printers shall keep a copy of every paper they print, and write thereon the name and abode of employer.

Penalty of £20 for neglect, or refusing to produce the copy within six months.

Sect. 30. It shall be lawful for any person, to whom, or in whose presence, any printed paper, not having the name and place of abode of any person printed thereon, in manner hereinbefore directed, or having a fictitious or false name or place of abode printed thereon, shall be sold, or

Persons, selling, etc., paper, without name and abode of printer, may be taken

Printers.

before a justice, to determine whether they have offended against this Act.

Not to extend to impressions of engravings, or the printing names and addresses, etc. ;

nor to alter any provisions respecting newspapers.

A justice may empower a peace officer to search for presses and types he suspects to be illegally used, and to seize them and the printed papers found.

Prosecutions to be commenced within three months after penalty incurred.

Recovery of penalties.

offered for sale, or shall be delivered gratis, or offered so to be, or shall be pasted, fixed, or left in any public place, or in any other manner exposed to public view, to seize and detain the persons so selling or offering to sell, or delivering or offering to deliver, or pasting, fixing, or leaving, in any public place, or in any other manner exposing to public view, any such printed paper, as aforesaid, and forthwith to take and convey him or her before some justice of the peace for the county, stewardry, riding, division, city, borough, town, or place, where such person shall be seized, or to deliver him or her to some constable, or other peace officer, to be taken and conveyed before such justice, as aforesaid, to the intent that such justice may hear and determine whether such person hath been guilty of any offence against this Act.

Sect. 31. Nothing herein contained shall extend to the impression of any engraving, or to the printing by letterpress, of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction, or otherwise.

Sect. 32. Nothing herein contained shall extend, or be construed to extend, to alter or vary any rule, regulation, or provision contained in any Act of Parliament now in force respecting the printing, publishing, or distributing any printed newspaper, or other printed paper. See *ante*, "*Newspapers*," 1013.

Sect. 33. If any justice of the peace, acting for any county, stewardry, riding, division, city, borough, town, or place, shall, from information upon oath, have reason to suspect that any printing press or types for printing is or are used or kept for use, without notice given and certificate obtained, as required by this Act, or in any place not included in such notice and certificate, it shall be lawful for any such justice, by warrant under his hand and seal, to direct, authorize, and empower any constable, petty constable, borsholder, headborough, or other peace officer, in the daytime, with such person or persons as shall be called to his assistance, to enter into any such house, room, and place, and search for any printing press or types for printing; and it shall be lawful for every such peace officer, with such assistance as aforesaid, to enter into such house, room, or place, in the daytime accordingly, and to seize, take, and carry away, every printing press found therein, together with all the types and other articles thereto belonging and used in printing, and all printed papers found in such house, room, or place.

Sect. 34. No person shall be prosecuted or sued for any penalty imposed by this Act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.

Sect. 35. Any pecuniary penalty imposed by this Act, exceeding the sum of £20, may be sued for and recovered, by any person who will sue for the same, by action of debt, in any of his Majesty's Courts of record at Westminster, if such penalty shall have been incurred in England or Wales, or the town of Berwick-upon-Tweed, and in his Majesty's Court of Exchequer in Scotland, if such penalty shall have been incurred in Scotland; in which action it shall be sufficient to declare or allege that the defendant is indebted to the plaintiff in the sum of £20 (being the sum demanded by such action), being forfeited by an Act made and passed in the thirty-ninth year of the reign of his Majesty king George the third, intituled, "*An Act*" [*here set forth the title of the Act*] (*a*);

(*a*) See the title of the Act, *ante*, p. 1324. *Fleming v. Bailey*, 5 *East*, 313.

The declaration which was framed on the above 39 Geo. 3, c. 79, stated

and the plaintiff, if he shall recover in any such action, shall have his full costs : and any pecuniary penalty imposed by this Act, and not exceeding the sum of £20, and for the recovery whereof no provision is hereinbefore contained, shall and may be recovered before any justice or justices of the peace for the county, stewardry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way ; and, in case such last-mentioned penalty shall not forthwith be paid, such justice or justices shall, by warrant under his or their hand and seal, or hands and seals, and directed to any constable or other peace officer, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale ; and, in case no sufficient distress can be had or made, such justice or justices shall commit the offender to the common gaol or house of correction for such county, stewardry, riding, division, city, borough, town, or place, there to remain, without bail or mainprize, for any time not exceeding six calendar months, nor less than three calendar months.

Sect. 36. All pecuniary penalties and forfeitures imposed by this Act shall, when recovered, either by action in any Court, or in a summary way before any justice, be applied and disposed of in manner herein-after mentioned ; that is to say, one moiety thereof to the plaintiff in any such action, or the informer before any justice, and the other moiety thereof to his Majesty, his heirs and successors.

Application of penalties.

Sect. 37. Every action and suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, for anything done or acted in pursuance of this Act, shall be commenced within three calendar months next after the fact committed, and not afterwards ; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere ; and the defendant or defendants in every such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon : and if such action or suit shall be brought or commenced after the time limited for

Limitation of actions.

Venue.

General issue.

that the defendant was indebted to the plaintiff in £60 ; and then contained three counts, in each of which the plaintiff went for a penalty of £20, under the statute, for printing a certain paper meant to be published and dispersed, and omitting the printer's name and place of abode, as required by the now repealed 27th section. After verdict for the plaintiff, *Lawes* moved in arrest of judgment, that no action lay by a common informer to recover penalties not exceeding £20 under this statute ; and, in support of the motion, sect. 35 was cited. *Birch* showed cause, and, amongst other things, contended that the jurisdiction of the superior Courts could not be ousted without express words, or by necessary implication ; and that here no such words or necessity existed : he cited *Hill v. Dechair*, *Sty.* 381 ; *Shipman v. Henbest*, 4 *T. R.* 109 ; *R. v. Morley*, 2 *Burr.* 1040 ; *Cates q. t. v. Knight*, 3 *T. R.* 442, and 2 *Hawk.*

c. 26, ss. 26, 30. But *per Lord Ellenborough*, C.J., "A common informer can have no right to sue for any penalty, but where power is given to him for that purpose by the statute. Now, the statute in question only says, that a common informer may sue in any Court of record for any pecuniary penalty imposed by the Act not exceeding £20. The penalty given for this offence, each of which must be taken by itself, and cannot be reckoned accumulatively, does not exceed £20 ; and, therefore, it is not within the provisions of the 35th clause, which give an action. And the sense of that clause requires that the form of the declaration there afterwards given should be read the same as if the sum to be recovered were left in blank ; for how otherwise can the penalty of £100 given by the 15th section be recovered." *Per Cur.* — Judgment arrested.

Printers.

Double costs.

bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and, in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs; which he or they shall and may recover in such and the same manner as any defendant can by law in other cases. But as regards double costs by the 5 & 6 Vict. c. 97, s. 2, the defendant is now entitled only to such costs as will fully indemnify him. (See "*Justices*," *ante*, 172.)

Form of convictions, etc.

Sect. 38. Convictions by any justice or justices of the peace for offences against this Act, and adjudications of forfeitures of licences to be made in pursuance of this Act, and notices and certificates delivered and granted in pursuance of this Act, shall or may be in the several forms set forth for such purposes respectively in the schedule to this Act annexed. (See the schedule and forms, *post*, 1331.)

51 Geo. 3, c. 65.

By the 51 Geo. 3, c. 65, to explain and amend the 39 Geo. 3, c. 79, so far as respects certain penalties on printers and publishers:

Printing papers or books contrary to 39 Geo. 3, c. 79.

Sect. 1, reciting the 39 Geo. 3, c. 79, ss. 27, 35, enacted, that nothing in the 27th section of the said Act contained shall extend to make any person or persons offending against the same liable to more than twenty-five forfeitures or penalties for printing or publishing, or dispersing, or assisting in publishing or dispersing, any number of copies of one and the same paper or book, contrary to the said section of the said Act. The 27th sect. is, however, now wholly repealed by the 2 & 3 Vict. c. 12, *post*, 1329.

Justices may mitigate penalties.

Sect. 2. If any justice or other magistrate, before whom any person shall be convicted of any offence or offences against the provisions of the before-mentioned Act, shall see cause to mitigate such penalty or penalties, it shall be lawful for such justice or other magistrate to mitigate or lessen the same to any sum not less than £5, over and above all reasonable costs and charges expended or incurred in the prosecution.

Name and residence of printers not required to be put to bank notes, bills, etc., or to any paper printed by authority of any public board or public office.

Sect. 3, reciting that doubts have arisen whether the provisions contained in the said Act may not be considered as extending to notes and post bills of the governor and company of the Bank of England, and to bills of exchange, promissory notes, bonds, and other securities for payment of money, bills of lading, policies of insurance, letters of attorney, transfers or assignments of public stocks, funds, and other securities, and to dividend warrants, receipts for money or goods, deeds, or other instruments, proceedings in the Courts of law and equity, and other inferior Courts, warrants, orders, and other papers, printed by the authority of any public board or public officer, in the execution of the duties of their respective offices, many of which securities, instruments, proceedings, and other matters aforesaid, are usually wholly or in part printed; enacts, that nothing in the said recited Act or in this Act contained shall extend, or be construed to extend, to require the name and residence of the printer to be printed upon any such bank note, bank post bill, bill of exchange, or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company, authorized or sanctioned by Act of Parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceedings in

any Court of law or equity, or in any inferior Court, warrant, order, or other papers, printed by the authority of any public board or public officer, in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments, proceedings, matters, and things aforesaid, shall have been or shall be printed; anything herein or in the said recited Act contained to the contrary thereof in anywise notwithstanding.

Printers.

Sect. 4. If any person or persons shall think himself, herself, or themselves aggrieved by any conviction, judgment, or determination of any justice or justices, relating to any matter or thing in the before-mentioned Act contained, then and in that case he, she, or they may appeal to the justices of the peace at the general quarter sessions to be holden in and for the county, city, or place where such conviction, judgment, or determination shall have been made, next after the expiration of twenty days from the making thereof, first giving six days' notice of such appeal to the person or persons prosecuting for such penalty or penalties; and the said justices shall hear and determine the said appeal at such general quarter sessions, or, if they think proper, adjourn the hearing thereof until the next general quarter sessions, to be holden for such county, town, or place; and the said justices may, in like manner, if they see cause, mitigate any penalty or penalties, and may order any money to be returned which shall have been paid or levied under any conviction as aforesaid, and may also order and award such costs to be paid by either party to the other, as they shall think and judge reasonable.

Appeal.

The 2 & 3 Vict. c. 12, passed the 4th June, 1839, for amending the 39 Geo. 3, c. 79, by sect. 1 repeals the 27th section of that Act.

2 & 3 Vict. c. 12.

Sect. 2 enacts, that every person who after the passing of this Act shall print any paper or book whatsoever, which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than £5: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said Act, either in the said Act or by any Act made for the amendment thereof (a).

Penalty on printers for not printing their name and residence on every paper or book; and on persons publishing the same!

Proviso.

Sect. 3. That in the case of books or papers printed at the University Press of Oxford, or the Pitt Press of Cambridge, the printer, instead of

As to books or papers printed at university presses.

(a) It has been held that a printer could not recover for labour or materials used in printing any work, unless he affixed his name to it, pursuant to the repealed 27th section of 39 Geo. 3, c. 79, and the principle of that decision would, it is conceived, be applicable to a case within the above enactment. (*Bensley and another v. Bignold*, 5 B. & Ald. 335; see *Stephens v. Robinson*, 2 C. & J. 209.) It has been made a question, but not decided, whether a printer can recover,

in an action for work and labour, for printing a periodical publication, for parts which were unstamped, if his name were printed on the first and last leaves, on their being bound into volumes, and published at the expiration of a half year, according to the repealed 27th section of the 39 Geo. 3, c. 78. (*Marchant v. Evans*, 2 Moore, 14; 8 Taunt. 142, S. C.; see *Brown v. Duncan*, 10 B. & Cres. 93, and *Cope v. Rowlands*, 2 M. & W. 149.)

Printers.

printing his name thereon, shall print the following words: "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

Actions for penalties under this Act to be commenced in name of attorney- or solicitor-general, etc.

Sect. 4 provides and enacts, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of her Majesty's Courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty, or forfeiture made or incurred, or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of her Majesty's attorney-general or solicitor-general in that part of Great Britain called England, or her Majesty's advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same, and every proceeding thereupon had, are hereby declared and the same shall be null and void to all intents and purposes.

This enactment applies only to the penalty given for an offence against the second section, and not to penalties for offences under the 39 Geo. 3, c. 79. See *Ex parte Higginbotham*, 9 Dowl. 200; *Reg. v. Johnson*, 8 Q. B. 102.

Persons sued before the passing of this Act for penalties incurred under the cited Act may apply to stay proceedings upon certain conditions.

Sect. 5. That immediately after the passing of this Act it shall be lawful for any person against whom any original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, on or before the day of the passing of this Act, for the recovery of any pecuniary penalty or penalties incurred under the said recited Act, to apply to the Court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, if such Court shall be sitting, or if such Court shall not be sitting to any judge of either of the superior Courts at Westminster, or to any justice of the peace before whom any such plaint or information shall be pending, or any conviction shall have been had or obtained, or to any other justice of the peace acting for the same county, riding, division, city, borough, or place, as the justice of the peace before whom such plaint or information shall be pending or such conviction shall have been had or obtained, for an order that such writ, suit, action, bill, plaint, or information shall be discontinued, or such conviction be quashed, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such Court, or in case of any proceeding before a justice to be taxed and ascertained by such justice; and every such Court or judge or justice of the peace, as the case may be, is hereby authorized and required, upon such application, and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application, to make such order as aforesaid; and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued, or such conviction shall be quashed, as the case may be: Provided always, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced subsequently to the sixteenth day of April, 1839, it shall be lawful for such Court, judge, or justice as aforesaid to make such order for discontinuing the same, or quashing any conviction had thereon, without payment of any costs, and in every such case, on the making of such order, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued, or such information shall be forthwith quashed, as the case may be: Provided always, that nothing herein contained shall be deemed or taken to enable any person to recover back any money paid before the passing of this Act, in pursuance

of any judgment or conviction duly obtained under the provisions of the said recited Act.

Printers.

Schedule.

Sect. 6. That the said Act, and all Acts made for the amendment thereof, except so far as herein repealed or altered, shall be construed as one Act together with this Act.

Former Acts and this Act to be construed as one Act.

THE SCHEDULE TO WHICH THE 39 GEO. 3, c. 36, REFERS.

_____ } Be it remembered, that on this _____ day of
to wit. } in the _____ year of the reign of _____, A. B.
of _____, is duly convicted before me [or us] _____ of her Ma-
jesty's justices of the peace for _____, in pursuance of an Act of the
thirty-ninth year of the reign of king George the third [set forth the title of the
Act (ante, 1324)], for that the said A. B., on the _____ day of _____,
at _____, did, contrary to the said Act, keep [or, use, as the case may
be], a printing press [or, types for printing, or, carrying on the business of a
letter founder, or, maker or seller of types, or, printing presses], not having given
such notice, and obtained such certificate, as by the said Act is required [or, in
_____ being a place not specified in any notice given by the said A. B.
in pursuance of the said Act, whereupon he had obtained such certificate, as by the
said Act is required; or, not keeping an account of a person to whom the said A.
B. sold printing types, or, a printing press, as the case may be; or, not printing
his name, etc., as the case may require; or, not keeping a copy of a paper printed
by him for hire, reward, gain, or profit, to wit, a paper [describing it], which the
said A. B. printed, etc.; or, not producing a copy of a paper printed, etc.; or,
specifying any other offence against the Act, and the time and place when
and where the same was committed]. Wherefore I [or, we], the said _____,
do adjudge that he the said A. B. do pay the sum of _____ [or, if the
penalty be mitigated, see a form, ante, "Conviction," Vol. I.], as a penalty for
his offence, in pursuance of the said Act.

(1.) Conviction of having or using a printing-press, or types for printing, without notice, or using the same in a place not specified in such notice, or not keeping accounts as required by the Act, or any other offence against the Act.

Given under our hands and seals, this _____ day of _____,
in the year of our Lord _____, and in the _____ year of the
reign of her Majesty Queen _____.

To the clerk of the peace for [here insert the county, stewardry, riding, division,
city, borough, town, or place], or his deputy.

I, A. B., of _____, do hereby declare, that I have a printing press
and types for printing, which I propose to use for printing, within
[as the case may require], and which I require to be entered for that purpose, in
pursuance of an Act passed in the thirty-ninth year of the reign of his late Ma-
jesty king George the third [set forth the title of the Act, ante, 1324].

(2.) Notice to clerk of peace, that any person keeps any printing press, or types for printing.

Witness my hand, this _____ day of _____.
Signed in the presence of _____.

I, _____, clerk [or, deputy clerk] of the peace for _____, do
hereby certify, that A. B., of _____, hath delivered to me a notice in
writing, appearing to be signed by him, and attested by C. D. as a witness to his
signing the same, that he, the said A. B. hath a printing press and types for
printing, which he proposes to use for printing, within _____, and which
he has required to be entered, pursuant to an Act passed in the thirty-ninth year
of his late Majesty king George the Third's reign [set forth the title of the Act,
ante, 1324].

(3.) Certificate that notice has been given of a printing-press, or types for printing.

Witness my hand, this _____ day of _____.

Prison-Breaking.

Prison-Breaking.

To the clerk of the peace for [as the case may be], or his deputy.

(4.) Notice to clerk of the peace, that any person carries on the business of a letter-founder, or maker or seller of types for printing or printing-presses.

I, A. B., of _____, do hereby declare, that I intend to carry on the business of a letter founder, or maker or seller of types for printing [or, of printing presses, as the case may be], at _____; and I hereby require this notice to be entered, in pursuance of an Act passed in the thirty-ninth year of the reign of his late majesty king George the third [set forth the title of the Act, ante, 1324].

Signed in the presence of _____

(5.) Certificate that the above notice has been given.

I, G. H., clerk [or, deputy clerk] of the peace for [as the case may be], do hereby certify, that A. B., of _____, hath delivered to me a notice in writing, appearing to be signed by him, and attested by E. F. as a witness to his signing the same, that he intends to carry on the business of a letter founder, or maker or seller of types for printing [or, of printing presses], at _____; and which notice he has required to be entered, in pursuance of an Act of the thirty-ninth year of his late Majesty king George the third [set forth the title of the Act, ante, 1324].

Witness my hand, this _____

day of _____

Prison-Breaking.

For the law relative to escapes where there is no actual *breaking* of the prison, see "*Escape*," Vol. II., and as to pound-breach and rescues, see "*Rescue*," Vol. V.

At common law.

It seemeth that, at the common law, all prison-breaches were felonies, if the party were lawfully in custody for any cause whatsoever. (2 *Hawk. c. 18, s. 1.*)

By statute.

But by the 1 Edw. 2, st. 2, c. 1, called the statute *de fragentibus prisonam*, the severity of the common law is moderated; in the explication of which statute will be contained the whole learning relating to this subject. The statute is thus: "Concerning prisoners which break prison, the king willeth and commandeth that none that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convicted thereupon, according to the law and custom of the realm."

Prison broken by a stranger.

Concerning Prisoners which break.]—Therefore, if the prison be broken by a stranger, and not by the prisoner, or by his procurement, this is no felony in the prisoner. (*Hale's Sum.* 108.)

What shall be deemed a prison.

Which break Prison.]—It seems clear that any place whatsoever wherein a person under a lawful arrest for a supposed crime is restrained of his liberty, whether in the stocks or street, or in the common gaol, or the house of a constable or private person, is properly a prison within this statute; for imprisonment is nothing else but a restraint of liberty. (2 *Hawk. c. 18, s. 4.*) And therefore this extendeth as well to a prison in law as a prison in deed. (2 *Inst.* 589.)

Must be an actual breaking,

But there must be an actual *breaking*; for if the door be open and he goes out, it is not felony, but a misdemeanour only. (2 *Inst.* 589; 2

Hawk. c. 18, s. 9.) So, if he merely gets over the walls. (*Id.*; *R. v. Burridge*, 3 *P. Wms.* 439.) If the prison be fired without the privy of the prisoner, he may lawfully break, to save his life. (*Hale's Sum.* 108.) Also, it seems that no breach of prison will amount to felony, unless the prisoner escape. (2 *Hawk. c. 18, s. 12.*) But there need not, it seems, be any actual intent to break, to constitute the offence. Where, therefore, it appeared that the prisoner made his escape from the house of correction by tying two ladders together and placing them against the wall of the yard, and, in making his escape, had thrown down some of the bricks of the wall, this was held to be a sufficient breaking. (*R. v. Haswell, R. & R.* 458.) An actual breaking must be stated in the indictment. (2 *Hawk. c. 18, s. 20.*)

Prison-Breaking.

and an escape.

That none that breaketh Prison shall have Judgment of Life or Member.]—That is, shall be guilty of felony. But nevertheless, he is still punishable as for a high misprision, by fine and imprisonment; for it cannot be thought the meaning of the statute, in ordaining that such offences shall not be punished as capital ones, to intend that they shall not be punished at all. (2 *Hawk. c. 18, s. 21.*)

How punishable.

As the offence is a common-law felony, if the person breaking prison is a convicted felon, it is punishable as such. (*R. v. Haswell, R. & R.* 458.) In the latter case, the punishment would be penal servitude for not less than five or more than seven years, or imprisonment not exceeding two years, with or without hard labour for the whole or any part of the imprisonment, and with or without solitary confinement (7 & 8 Geo. 4, c. 28, s. 9; 20 & 21 Vict. c. 3); such confinement not exceeding one month at any one time, nor three months in any one year (7 Will. 4 & 1 Vict. c. 90, s. 5); and, if a male, to be once, twice or thrice publicly or privately whipped, in addition to the imprisonment, if the Court shall think fit. (7 & 8 Geo. 4, c. 28, s. 8.)

Except the Cause for which he was taken and imprisoned did require such Judgment.]—This is to be intended of a lawful cause; and therefore false imprisonment is not within this Act. (2 *Inst.* 590.)

Party must be lawfully in prison.

Imprisonment is a restraint of a man's liberty under the custody of another, by lawful warrant, in deed or in law. Lawful warrant is either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a felony is done, and the offender, by a lawful *mittimus*, is committed to gaol for the same: but between these two cases there is a great diversity; for in the first case, whether any felony were committed or no, if the offender be taken by force of a *capias*, the warrant is lawful, and if he break prison, it is felony, although no felony were committed; but in the other case, if no felony be done at all, and yet he be committed to prison for a supposed felony, and break prison, this is no felony, for there is no *cause*. (2 *Inst.* 590.)

Imprisonment, what.

So that the cause must be just and not feigned, for things feigned require no judgment; thus, if a man give another a mortal wound for which he is committed to prison, and breaketh prison, and the other dieth of the wound within the year, this death hath relation to the stroke; but because relations are but fictions in law, and fictions are not here intended, this prison-breaking is not felony. (2 *Inst.* 591; *Cole's case*, *Plowd. Com.* 401.)

For what.

So that the offence for which the party was imprisoned must be a capital one at the time of the offence, and not become such by a matter subsequent. (2 *Hawk. c. 18, s. 14.*)

And the cause must be expressed in the *mittimus*, although not so certainly as in an indictment; yet with such a convenient certainty as it may appear judicially that the offence requireth such judgment; as, not

Prison-Breaking.

for felony generally, but for felony in stealing such a horse, and the like. (2 *Inst.* 591.)

But if the offence for which the party is committed be supposed in the *mittimus* to be of such a nature as requires a capital judgment; yet if, in the event, it be found to be of an inferior nature, and not to require such a judgment, it seems difficult to maintain that the breaking of the prison, on a commitment for it, can be felony; for the words of the statute are, except the cause for which he was taken and imprisoned did require such judgment: and here it appears that the offence, which is the cause of his imprisonment, doth not require such a judgment. (2 *Hawk.* c. 18, s. 15.)

Suspicion, etc.

But if a man be committed by lawful warrant for *suspicion* of felony done, if he break prison he may be indicted for that escape, albeit the commitment be for suspicion of felony, and yet no judgment can be given against him for suspicion, but for the felony itself, whereof he is suspected. (2 *Inst.* 592.)

And an indictment that such a person "feloniously broke the prison," generally, is not good; but it ought to rehearse the specialty of the matter, that he, being imprisoned for such or such felony, broke the prison. (2 *Inst.* 591.)

But if the party be only arrested for and in his *mittimus* charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by self-defence or by misadventure, and the offence be in truth no greater than the *mittimus* doth suppose it to be, it is clear, from the express words of the statute, that the breaking of the prison cannot amount to felony. (2 *Hawk.* c. 18, s. 15.)

But if a felony be made by a subsequent statute, and an offender is committed thereupon, if he break prison, it is felony; for, since all breaches of prison were felonies by the common law, which is restrained by this statute in respect only of imprisonment for offences not capital, when an offence becomes capital, it is as much out of the benefit of the statute as if it had always been so. (*Hales Sum.* 108.)

Also, it is said that the party may be arraigned for prison-breaking, before he be convicted of the crime for which he was imprisoned; for that it is not material whether he were guilty of such crime or not; for the words of the statute are, *for which he was taken and imprisoned.* (*Hawk.* c. 18, s. 16.)

But if he be first indicted and acquitted of the principal felony, he shall not be indicted for the breach of prison afterwards; for it being clear that he was not guilty of the felony, he is in law as a person never committed for felony, and so his breach of prison is no felony. (1 *Hale*, 612.)

Voluntary or negligent gaoler.

But the gaoler shall not be punished as a felon for the party's breach of prison, unless he voluntarily consented to it: but it seems to be a negligent escape in the gaoler, for which he may be punished by fine and imprisonment, because there wanted either that due strength in the gaol, or that due vigilance in the gaoler or his officers, that should have prevented it; and if the gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners or to retake them that escape. (1 *Hale*, 601.)

And therefore if a criminal, endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. (1 *Hawk.* c. 28, s. 13.) The 28 & 29 Vict. c. 126, ss. 37-40, contains provisions relating to assisting prisoners to escape and carrying spirituous liquors and tobacco into or letters into or out of prison: see under tit. "*Gaol*," Vol. II.

Assaults on peace-officers.

As to assaulting peace-officers, see "*Assault*," Vol. I.

(Commencement as usual.)	That A. O., on the	day of	Forms.
A.D.	at the parish of	, in the	
said county, being then imprisoned in the house of correction at			Commitment
in the said county, under and by virtue of a warrant of commitment of one of			for prison-break-
his Majesty's justices of the peace for			ing.
word "feloniously," if the defendant were in custody for a misdemeanour],			
unlawfully and wilfully, did break the said prison, and escape from the same.			
And you, the said keeper, etc. [And conclude as usual.]			

_____ } The jurors for our lady the Queen upon their oath present, that
to wit. } A. C., constable of our said lady the Queen in and for the said county,
on the day of , in the year of the
reign of our lady the now Queen Victoria, in his constableness, in the county
aforesaid, did take and arrest one A. O. on suspicion of having committed a
certain [felony, in feloniously taking and leading away one black gelding, the
property of , of the value of], and thereupon he
the said A. O., under the custody of him the said A. C., the constable afore-
said, was brought before J. P., Esq., one of the justices of our said lady the
Queen assigned to keep the peace in and for the said county, and also to hear
and determine divers felonies, trespasses, and other misdemeanours, within the
said county committed: and he the said J. P., by his warrant, directed to the
said A. C. and others, did command the said A. C. to carry and convey the
said A. O. to the gaol of our said lady the Queen, at , in the
county aforesaid, there to be safely kept until he should be lawfully delivered
from thence; by virtue of which said warrant he the said A. O. was taken and
detained by him the said A. C.; and whilst he the said A. C. was conveying
and carrying him the said A. O. to the gaol aforesaid, afterwards, to wit, on
the day of , in the year aforesaid, he the said
A. O., did [feloniously] break away and escape from and out of the custody
of him the said A. C., the constable aforesaid, against the will of him the said
A. C., and against the peace of our said lady the Queen, her crown and
dignity.

Indictment for
prison-breaking,
by escaping from
a constable.

_____ } The jurors for our lady the Queen upon their oath present, that
to wit. } A. O., on the day of in the
year of the reign of our lady the now Queen Victoria, was arrested, im-
prisoned, and detained, in the gaol of our said lady the Queen, at
, for a certain [felony] by him committed; that is to say, for [felo-
niously taking and leading away one black gelding, the property of ,
of the value of]; and that he the said A. O., on the
day of , in the year aforesaid, the aforesaid gaol, at
aforesaid, [feloniously, omit this word if party was not in custody for treason
or felony,] did break, and thereby did escape from and out of the said gaol,
against the peace of our said lady the Queen, her crown and dignity.

Indictment for
breaking out of
gaol.

Process.

Process is so called because it *proceeds* or issues forth in order to What.
bring the defendant to answer the charge preferred against him; and
signifies the writs or judicial means by which he is brought to answer.

1. *To compel an Appearance in a Court of Record.*

As to process against witness, see "*Evidence*," Vol. II.
 As to process against jurors, see "*Jurors*," ante, 63.
 As to process for contempt, see "*Attachment*," Vol. I.

Process before Indictment, not referable to Appearance in Courts of Record. (See tit. "*Summons*," "*Warrant*," "*Search Warrant*," Vol. V., and tit. "*Commitment*," Vol. I.)

Process after Indictment, and referable to Appearance in Courts of Record.

I. *To Compel an Appearance*, p. 1337.

II. *Of Outlawry for Non-appearance*, p. 1338.

III. *Forms*, p. 1341.

I. To compel an Appearance in a Court of Record.

Process by the commission.

By the commission of the peace, the justices in sessions have power to make and continue processes upon indictments against the persons indicted, until they can be taken, surrender themselves, or be outlawed.

Process or indictments taken in the tourn.

And by the 1 Edw. 4, c. 2, indictments and presentments taken in the sheriff's tourn shall be delivered to the next sessions, who may award process thereupon in like form as if they had been taken before themselves.

Process by justices out of sessions.

And the law also in several cases in express words directs process to be made by justices out of sessions; and in other cases by necessary implication; and where a statute doth give power to justices out of sessions, to inquire, hear, and determine, there they may make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine; and this may be either before or after presentment or indictment, as the several statutes do require: before presentment or indictment, it is called a *warrant*; after presentment or indictment, it is properly called *process*. (*Dalt. c. 193, p. 471.*)

Process, what.

Commonly, an indictment, being but an accusation against a man, is of no force but only to put him to answer unto it. And hereof all process hath the name, because it *proceedeth*, or goeth out, upon former matter, either original or judicial. (*Lamb. 519.*)

No need of, if party be present.

And it seemeth plain, from the nature of the thing, that there can be no need of process where the defendant is present in Court, but only where he is absent. (*2 Hawk. c. 27; 1 Chit. C. L. 338.*)

To be in queen's name.

The process ought to be in the name of the queen. And if it issue from the Queen's Bench, it ought to be under the teste of the chief justice. If it issue from any other Court, there seems to be the same reason that it ought to be under the teste of the first in the commission. (*2 Hawk. c. 27, s. 8; 1 Chit. C. L. 339.*)

When returnable.

Upon an indictment in sessions (for a misdemeanour, not being a felony) there must be fifteen days between the teste and return of the *venire*; but if the entry be by consent of parties, the *venire* may be returnable *immediate*, and the trial be the same day. (*Anon. 3 Salk. 371.*)

Process for felony.

Process on an indictment for felony, by the 25 Edw. 3, c. 14, is two

capiases, and then an *exigent*. (*Hale's Sum.* 209; 2 *Hawk. c.* 27, s. 115.) But this statute does not apply to Courts of oyer and terminer and gaol delivery. (*R. v. Yandell*, 4 *T. R.* 521.)

The ordinary processes upon all indictments of trespass against the peace, or of other offences against penal statutes, not being felony, or a greater offence, are as follow: first, if the offender be absent, a *venire facias*, which is but in the nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. (2 *Hawk. c.* 27, s. 9.)

If it appear by the return of such *venire*, that the party hath lands in the county, whereby he may be distrained, the *distress infinite* shall be awarded from time to time till he do appear, and by force thereof he shall forfeit on every default so much as the sheriff shall return upon him in issues. But if a *nihil* be returned on such a *venire*, then three *capiases*, that is, a *capias*, *alias*, and *pluries*, shall issue. (2 *Hawk. c.* 27, s. 10.)

Where the inhabitants of a parish are indicted or presented, the process is, first, a *venire*, then a *distringas*.

And see further, as to the different kinds of process, 1 *Chit. C. L.* 338.

The 48 Geo. 3, c. 58, s. 1, enacts, that whenever any person shall be charged with any offence for which he or she may be prosecuted by indictment or information in his Majesty's Court of King's Bench, not being treason or felony, and the same shall be made appear to any judge of the same Court by affidavit, or by certificate of an indictment or information being filed against such person in the said Court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him or some other judge of the same Court, or before some one of his Majesty's justices of the peace, in order to his or her being bound to the king's Majesty with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said Court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the said Court in term time, or of one of the judges of the said Court in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said Court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction, shall have received judgment for the same, unless sooner ordered by the said Court to be discharged; and that where any person, either by virtue of such warrant of commitment as aforesaid, or by virtue of any writ of *capias ad respondendum* issued out of the said Court, is now detained, or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information aforesaid, cause an appearance, and also a plea of demurrer to be entered in the said Court to such indictment or information, an appearance and the plea of not guilty will be entered thereto in the name of such person; and in case he or she shall thereupon, for the said space of eight days after such delivery of a copy of the indictment or information as aforesaid, neglect to cause an appearance, and also a plea or demurrer to be entered in the said Court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon an affidavit being

1. To compel an Appearance in a Court of Record.

Process for misdemeanours, etc.

When any person is charged with any offence (not being treason or felony) for which he may be prosecuted by indictment or information in K. B.; upon affidavit thereof, or on certificate of indictment, etc., being filed, any judge of the Court may issue his warrant to apprehend the party; who shall be thereupon held to bail to answer the charge, or on failure of bail shall be committed; and if any person in custody for want of bail shall not plead in eight days after copy of indictment, etc., and notice to plead, are delivered at the gaol, the prosecutor may enter the plea of not guilty and proceed to trial.

2. *Of Outlawry for Non-appearance.*

Party acquitted may be discharged.

made and filed in the said Court of the delivery of a copy of such indictment or information, with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper or turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said Court authorized to take affidavits in the said Court, to cause an appearance and the plea of not guilty to be entered in the said Court to such indictment or information, for such person, and such proceedings shall be had thereupon as if the defendant in such indictment or information had appeared and pleaded not guilty, according to the usual course of the said Court; and that if, upon the trial of such indictment or information, any defendant so committed and detained as aforesaid, shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said Court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly. (See "*Bail*," Vol. I.)

Bench warrants.

Formerly it was the established practice, independently of this statute, upon an indictment found for a misdemeanour at the assizes or sessions, to issue a bench warrant, signed by a judge or justices of the peace, or two of the latter, to apprehend the defendant. Now, however, the more usual practice is to apply to the clerk of assize or clerk of the peace for a certificate of the indictment having been found, and thereupon to go before a justice and obtain a summons or warrant under the 11 & 12 Vict. c. 42, s. 3, by which means the defendant will be brought before the justices, and will be obliged to enter into recognizances to appear and answer, or for want of sureties will be committed. (See the statute and forms, tit. "*Warrant of Apprehension*," Vol. V.)

II. Of Outlawry for Non-Appearance.

Process of outlawry.

Judgment of outlawry is given by the coroner, at the fifth county Court, upon the party's not appearing to the *exigent*, which is a writ commanding the sheriff to cause the defendant (*exigi*) to be demanded from county Court to county Court until he be outlawed: and such judgment is entered thus: "Therefore, by the judgment of the coroners of our lady the queen of the county aforesaid he is outlawed." (2 *Hawk.* c. 48, s. 21.)

Meaning of the word outlaw.

The word outlaw (*utlaghe*), *utlagatus*, cometh not immediately from the Latin *lex*, but is derived to us through the Saxon *laga*, which signifieth law. And a person outlawed signifies one that is out of the protection of the queen, and out of the aid of the law.

A woman outlawed.

And a man which is outlawed is called outlawed; but a woman which is outlawed is called wived, and not *utlagata*; for that women are not sworn in leets or tornes, as men at the age of twelve or more are; and therefore men may be called *utlagati*—that is, *extra legem positi*, but women are *waviata*—that is, *dereheta*, left out or not regarded, because they were not sworn to the law; wherein it is to be noted, that of ancient time a man was not said to be within the law that was not sworn to the law, which is intended of the oath of allegiance in the leet. (1 *Inst.* 122.)

Infant.

Hence it is that a man under the age of twelve years cannot be outlawed. (1 *Inst.* 122.)

Process of outlawry lies in all indictments of treason or felony, and on all returns of *rescous*; and also on all indictments of trespass with force and arms; and it seems probable that it lies on an indictment for conspiracy or deceit, or any other crime of a higher nature than a trespass with force and arms; but not on any indictment for a crime of an inferior nature. And it seems agreed that it lies not on any action on a statute, unless it be given by such statute, either expressly, as in the case of a *præmunire*, or impliedly, as where a recovery is given by an action wherein such process lay before, as on a writ of trespass for a forcible entry, on the 8 Hen. 6, c. 9, because the statute expressly gives a recovery by such a writ, and such process lies on it by the common law. (2 Hawk. c. 27, s. 113.)

2. Of Outlawry for Non-appearance.

For what outlawry may be.

By the 31 Eliz. c. 3, in every action personal, wherein any *exigent* shall be awarded out of any Court, one writ of proclamation shall be awarded out of the same Court, having day of teste and return as the writ of *exigent* shall have, directed, and delivered of record to the sheriff where the defendant dwells; which writ of proclamation shall contain the effect of the action; and the sheriff shall make one proclamation in the open county Court, and another at the general quarter sessions where the defendant dwells, and another a month at least before the *quinto exactus*, by virtue of the said writ of *exigent*, according to the 7 Will. 4 & 1 Vict. c. 45, s. 2, by affixing on a Sunday, previously to the commencement of divine service, a written or printed, or partly written and partly printed, notice of such proclamation on or near to the doors of all the churches and chapels of that town or parish where the party to be outlawed at the time of the *exigent* awarded was dwelling, or if he was then dwelling out of any parish, then on or near to the doors of all the churches and chapels of the next adjoining parish in the same county. (See *R. v. Worcestershire Justices*, 4 N. & P. 440; 2 Chit. Arch. Prac. 929.)

Proclamation of outlawry at the sessions, etc.

Also, by the 4 & 5 Will. 3, c. 22, s. 4, upon issuing any *exigent* out of any of the king's Courts against any person for a criminal matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of proceeding is mentioned to inhabit, according to the form of the 31 Eliz. c. 3, which writ of proclamation shall be delivered to the sheriff three months before the return of the same.

If there are two coroners in a county, or more, one may execute the writ, as in case of an *exigent*, but the return must be in the name of the coroners. (2 Hale, 56.)

Return of the outlawry.

And the return of the outlawry must be certain: it must show where the county Court was held, and in what county; and must return the day, and year of the queen, to every *exactus*. (2 Hale, 203.)

Also, the sheriff's name and office must be subscribed to the return of the *exigent*. (2 Hale, 204.)

It is said that the justices in sessions cannot issue a *capias utlagatum*, but must return the record of the outlawry into the Queen's Bench, and the process of *capias utlagatum* shall issue. (2 Hale, 52.) But in *T. 10 Jac. 1*, the opinion of all the Court of Common Pleas was, that if one be outlawed before the justices of the peace on an indictment of felony, they may award a *capias utlagatum*, and so was the opinion of *Periam*, chief baron, and all the Court of Exchequer; for they that have power to award process of outlawry have also power to award a *capias utlagatum*, as incident to their authority and jurisdiction. (12 Rep. 103.)

Capias utlagatum.

If a person be outlawed at the suit of one man, all men shall take advantage of this personal disability. (1 Inst. 128.) But such disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. (1 Inst. 128.)

Consequences of outlawry.

2. *Of Outlawry for Non-appearance.*

For treason or felony.

For an inferior offence.

Goods forfeited from the time of issuing the *exigent*.

Lands forfeited from the time of the outlawry.

But the outlawry must be first returned.

And after inquisition found.

Whether it is lawful to kill an outlaw.

Judges of assize may award execution of persons outlawed before justices.

Cannot be a juror.

Person outlawed cannot be a plaintiff.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared and judgment had been given against him, as long as the outlawry is in force. (2 *Hawk. c. 48, s. 22.*) But the outlawry for a misdemeanour doth not inure as a conviction for the offence, as it doth in cases of treason and felony; but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. (*R. v. Tippen, 2 Salk. 494.*)

The very issuing of the *exigent*, in case of treason or felony, gives to the queen the forfeiture of the goods of the party from the time of the teste of the writ of *exigent*; and the forfeiture by the *exigent* awarded stands, although the indictment be quashed, until there be a judgment of reversal on a writ of error; because the queen's title, being of record, must be awarded by a record. (2 *Hale, 204, 205.*)

And as the award of the *exigent* gives the forfeiture of the goods, so the outlawry gives the forfeiture or loss of the lands of the party outlawed; to wit, in case of outlawry of treason, his lands are forfeited to the queen, of whomsoever they are held; and, in case of outlawry of felony, to the lord by escheat of whom they are immediately holden. (2 *Hale, 206.*)

But it must be remembered, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff, with the writ of *exigi facias*, and the return indorsed. (2 *Hale, 206.*) Or else it must be removed by *certiorari*; for the judgment given by the coroner in the county Court is not matter of record, that Court not being a Court of record. (1 *Inst. 288.*)

And by the outlawry all *personal* chattels are vested in the queen by forfeiture; but *real* chattels, or freehold estates, are not vested in the queen till after inquisition found. (*Anon. 3 Salk. 262; R. v. Cooke, 1 M'Cl. & Y. 196; Tisdall v. Bennett, 1 Jones, Irish Exch. 492.*)

In ancient times no man could have been outlawed but for felony, the punishment whereof was death; and upon this account an outlawed man was called *wolfeshead*, because he might be put to death by any man as a wolf, that hateful beast, might. But in the beginning of the reign of king Edward the third, it was resolved by the judges, for avoiding of inhumanity and effusion of Christian blood, that it should not be lawful for any man but the sheriff, having lawful warrant, to put to death any man outlawed, though it were for felony; and, if he did, he shall undergo such pain of death as if he had killed any other man: and so the law continues to this day. (1 *Inst. 28.*)

If a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol delivery may award execution of this prisoner; for they are constituted to deliver the gaol. (4 *Inst. 166; Hale's Sum. 158; 2 Hale, 35.*)

It seems to be a good challenge of a juror, that he is outlawed either for a criminal matter, or, as some say, in a personal action; but not a principal challenge, but only to the favour, unless the record of the outlawry be produced. (2 *Hawk. c. 25, s. 16; c. 43, s. 25.*)

Where a person is outlawed, the defendant may show all the matter and outlawry returned of record, and demand judgment if he shall be answered, because he is out of the law, to sue an action during the time that he is outlawed. (1 *Inst. 128.*)

An outlaw is incapacitated from suing in his own right, from seeking to enforce a legal right of his own (*Walford v. Meetham, Moore, 431*), and

from appearing in Court for any other purpose than either to reverse his outlawry (*Aldridge v. Buller*, 2 *M. & W.* 412; 5 *Dowl.* 733, *S. C.*), or to protect or defend himself from being wrongfully charged in execution (*Adcock v. Fiske*, 8 *Scott*, 138; 8 *Dowl.* 66, *S. C.*), or from any other wrongful action or proceeding. (*Hall v. Hawkins, Beavan*, 73; *Walker v. Thelluson*, 1 *Dowl. N. S.* 578.)

Outlawry, in a *personal* action, is not a good exception against a witness, as it is against a juror. (2 *Hawk.* c. 46, s. 21; *Co. Lit.* 6 b.)

An outlawed person may make a will, and have executors or administrators. (*Woolley v. Bradwell*, *Cro. El.* 575.)

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. (1 *Leon.* 325.)

Outlawry may be reversed several ways: as, by procuring a *superseades* and delivering it to the sheriff before the *quinto exactus*; or by showing any matter apparent on record which makes the outlawry erroneous, as the want of an original; or the omission of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between the original and *exigent*, or other process, or by a misnomer or want of addition. (2 *Hawk.* c. 50. See 2 *Chit. Arch. Prac.* 935.)

And upon a writ of error upon an outlawry in felony, the party outlawed must render himself in custody, and pray the allowance of the writ of error in person; and if the outlawry be reversed, he shall be put to answer the indictment. (2 *Hale*, 209.) But by the 4 & 5 Will. 3, c. 18, one outlawed, except for treason or felony, need not appear in person to reverse an outlawry, but may appear by attorney. (*Anon.* 2 *Salk.* 496.)

3. Forms.

May be a witness.

May make a will.

Reversing outlawry.

In what case the party must appear personally to reverse it.

III. Forms.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. To the sheriff of the county of Westmoreland, greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you cause A. O., of _____, in your said county [yeoman], to come before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanours, in the said county, committed at _____, in your said county, on the _____ day of _____ next ensuing, to answer unto us upon certain articles presented against him, the said A. O. And have you there then this precept.

(1.) *Venire.*

Witness, J. P. and K. P., at _____, the _____ day of _____, in the _____ year of our reign.

And upon this *venire*, if the defendant be returned sufficient, and maketh default, then a *distringas* shall be awarded, and so the same process infinite, until he come in; but if a *nilil habet* be returned at the first, then, after the *venire*, there shall go out a *capias*, *alias*, *pluries*, and *exigent*. (*Dalt. Sher.* 160.)

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. To the sheriff of the county of _____, greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and distrain A. O., of _____, in your county [yeoman], by all his lands and tenements, etc., and that you answer for the issues thereof, etc., and that you have his body before our justices assigned [and so on as before in the venire].

(2.) *Distringas.*

3. *Forms.*

But if a *nilhil* (as hath been said) be returned at first upon the *venire facias*, then a *capias* shall issue, thus:—

(3.) The *capias*.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. To the sheriff of the county of , *greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and take A. O., of* , *in your county [yeoman], if he shall be found in your bailiwick, and him cause to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanours, in the said county committed, at* , *in your county, on the* day of next ensuing, *to answer unto us concerning divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ.*

Witness, J. P. and K. P., at , the day of , in the year of our reign.

At which day A. S., knight, sheriff of the county aforesaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.

Note.—The cause why the entry is made, and he did not come, is, because the party may appear voluntarily, and so avoid the attachment or arrest of his body.

(4.) The *alias capias*.

Victoria, etc. [as ante, 1341, No. 1.] To the sheriff of . *We command you, as we before commanded you, that you omit not [as before].*

At which day [as before], *and he did not come. Therefore it is commanded to the sheriff, as it hath been often commanded, etc.*

(5.) The *pluries capias*.

Victoria, etc. [as ante, 1341, No. 1.] To the sheriff, etc. We command you, as we have often commanded you, that you omit not [as before].

At which day, A. S., knight, the sheriff aforesaid, returned that the aforesaid A. O. is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cause to be demanded, etc.

(6.) The *exigent*.

Victoria, etc. [as ante, 1341, No. 1.] To the sheriff, etc. greeting. We command you that you cause A. O., of , *in your county [yeoman], to be demanded, until, by the law and custom of our kingdom of England, he be outlawed, if he shall not appear; and if he shall appear, that then you take him and cause him to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanours, in your said county committed, at the general quarter sessions of the peace of your county, next after the feast of* next ensuing, *to be held wheresoever in the same county the said sessions shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicted. And have you then there this writ. Witness, Sir J. P., baronet, at* , *in the said county, the* day of , *in the* year of our reign.

At which day, A. S., knight, sheriff of the county aforesaid, returned that at this county Court holden at , *the* day of *in the* year of the reign of our lady the Queen that now is, *and so at four other county Courts then next following there holden, the aforesaid A. O. was demanded, and did not appear. Therefore, by the judgment of the coroner of our said lady the Queen, in the county aforesaid, he was outlawed.*

Victoria, etc. [as ante, 1341, No. 1.] To the sheriff, etc. greeting. We command you that you omit not, by reason of any liberty in your county, but that you take O. A., late of , in your county [labourer], if he shall be found within your county, and him cause safely to be kept, so that you have his body before the keepers of our peace and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanours, in your county committed, at , the day of , to stand right in our Court before our justices aforesaid, upon a certain outlawry against him, the said A. O., promulgated, at our suit, for certain felonies [or trespasses] whereof he is indicted. And have you then there this writ. Witness, etc.

Promissory Notes.

(7.) The *capias* *utlagatum*.

Promissory Notes.

By the 48 Geo. 3, c. 88, s. 2, it is enacted, that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable for the delivery of any goods, specifying their value in money, less than the sum of 20s. in the whole, heretofore made or issued, or which shall hereafter be made or issued, shall, from and after the first day of October, 1808, be and the same are hereby declared to be absolutely void and of no effect; any law, statute, usage, or custom, to the contrary thereof in anywise notwithstanding.

Promissory notes for less than 20s. declared void.

Sect. 3. If any person or persons shall, after the first day of July, 1808, by any art, device, or means whatsoever, publish or utter any such notes, bills, drafts, or engagements as aforesaid, for a less sum than 20s., or on which less than the sum of 20s. shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same, every such person shall forfeit and pay, for every such offence, any sum not exceeding £20, nor less than £5, at the discretion of the justice of the peace who shall hear and determine such offence.

Penalty on persons uttering such notes, £20 to £5.

Sect. 4. It shall be lawful for any justice or justices of the peace, acting for the county, riding, city, or place, within which any offence against this Act shall be committed, to hear and determine the same in a summary way, at any time within twenty days after such offence shall have been committed; and such justice or justices, upon any information exhibited or complaint made upon oath in that behalf, shall summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses, or otherwise (which oath such justice or justices is or are hereby authorized to administer), shall convict the offender, and adjudge the penalty for such offence.

Justices may determine on such offences within twenty days.

Sect. 5. If any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed, without a reasonable excuse for such his neglect or refusal, to be allowed by such justice or justices, then such person shall forfeit, for every such offence, the sum of 40s., to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this Act.

Penalty on witnesses not attending, 40s.

Sect. 6. That the justice or justices before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out, in the manner and form following (that is to say);

Be it remembered, that on the _____ day of _____ in the year of our Lord _____, A. B., having appeared before me [or us], one [or more] of his Majesty's justices of the peace [as the case may be] for the county, riding, city, or place [as the case may be], and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party [as the case may be], is convicted of [specifying the offence].

Which conviction the said justice or justices shall cause to be returned to the then next general quarter sessions of the peace of the county, riding, city, or place, where such conviction was made, to be filed by the clerk of the peace; to remain and be kept among the records of such county, riding, city, or place.

Sect. 7. It shall be lawful for any clerk of the peace for any county, riding, city, or place, and he is hereby required, upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions filed by him under the directions of this Act, to be forthwith delivered to such person or persons upon payment of 1s. for every such copy.

Sect. 8. The pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this Act, shall be forthwith paid by the person convicted, as follows ; one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed ; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prosecute any appeal against such conviction, such justice or justices shall, by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner ; and which said warrant of distress the said justice or justices shall cause to be made out in the manner and form following (that is to say) :

Whereas A. B., of _____, in the county of _____, is this day convicted before me [or, us], one [or more] of his Majesty's justices of the peace [as the case may be] for the county of _____, [or for the riding of the county of York, or for the town, liberty, or district of _____, as the case may be] upon the oath of _____, or _____, a credible witness or witnesses [or, by confession of the party, as the case may be], for that the said A. B. hath [here set forth the offence], contrary to the statute in that case made and provided, by reason whereof the said A. B. hath forfeited the sum of _____, to be distributed as herein is mentioned, which he hath refused to pay: these are, therefore, in his Majesty's name, to command you to levy the said sum of _____ by distress of the goods and chattels of him the said A. B.; and if within the space of five days next after such distress by you taken, the said sum, together with the reasonable charges of taking the same, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of _____ to _____, of _____, who informed me [or, us, as the case shall be] of the said offence, and the other half of the said sum of _____ to the overseer of the poor of the parish, township, or place where the offence was committed, to be employed for the benefit of such

poor, returning the surplus [if any] upon demand to the said A. B., the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of . . . that then you certify the same to me [or, us, as the case shall be], together with this warrant.

Given under my hand and seal [or, our hands and seals], the day of . . . , in the year of our Lord.

SecT. 9. It shall be lawful for such justice or justices to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security, to the satisfaction of such justice or justices, for his appearance before the said justice or justices on such day as shall be appointed by the said justice or justices for the day of the return of the said warrant or distress (such day not exceeding five days from the taking of such security): which security the said justice or justices is and are here hereby empowered to take by way of recognizance or otherwise.

Security for appearance of party, on return of such warrants.

SecT. 10. If, upon such return, no sufficient distress can be had, then, and in such case, the said justice or justices shall and may commit such offender to the common gaol or house of correction of the county, riding, division, or place where the offence shall be committed, for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender, thinking him or herself aggrieved by such conviction, shall give notice to the informer that he or she intends to appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county, riding, or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices, with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions (which notice of appeal, being not less than eight days before the trial thereof, such person so aggrieved is hereby empowered to give); and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter session shall be final, binding, and conclusive to all intents and purposes.

Offenders may be committed for want of distress.

SecT. 11. No person shall be disabled from being a witness in any prosecution for any offence against this Act, by reason of his being an inhabitant of the parish wherein such offence was committed.

Parishioners may be witnesses.

SecT. 12. No proceedings to be had, touching the conviction or convictions of any offender or offenders against this Act, shall be quashed for want of form, or be removed by writ of *certiorari*, or any other writ or process whatsoever, into any of his Majesty's Courts of record at Westminster.

Convictions not removable by *certiorari*.

SecT. 13. If any action or suit shall be commenced against any person or persons for anything done or acted in pursuance of this Act, then and in every such case such action or suit shall be commenced or prosecuted within three calendar months after the fact committed, and not afterwards; and the same and every such action or suit shall be brought within the county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act: and if the same shall appear to have been so done, or if any such action or suit shall be

Limitation of actions.

Venue.

*Promissory
Notes.*

Treble costs.

brought after the time limited for bringing the same, or be brought or laid in any other place than as aforementioned, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the recovery thereof as any defendant or defendants hath or have in any other cases by law.

INDEX.

- ABATEMENT OF NUISANCES, 1033.
- ABJURATION.
oath of. See OFFICE AND OFFICERS.
- ACCESSARIES
in Larceny. See LARCENY.
in MALICIOUS INJURIES. See that title.
- ACCUSATIONS. See LIBEL.
- ACQUITTAL. See INDICTMENT.
- ACTIONS AGAINST MAGISTRATES,
etc. See JUSTICES OF THE PEACE.
- ACTION, POPULAR. See INFORMATION.
- ACTORS. See PLAYERS.
- ADDITION.
statement of, in indictment, 22, 23.
- ADJOURNMENT.
of giving judgment, 58.
of court leet, 326.
- ADJUDICATION. See ORDER.
- ADMINISTERING OATHS. See OATHS.
- ADMINISTERING POISON, etc.
to murder, 749.
- ADMIRALTY COURT. See LARCENY, 296.
MALICIOUS INJURIES TO PROPERTY,
797.
- ADVERTISEMENT IN NEWSPAPERS,
etc., Duty on. See NEWSPAPERS.
- AFFIDAVIT. See OATH.
- AFFIRMATION INSTEAD OF OATH,
1076.
- AGENTS.
embezzlement by, 265.
how far a party may be criminally liable
for acts of, 339.
- ALEHOUSE,
quartering of soldiers in. See MILI-
TARY LAW.
- ALIAS DICTUS.
use of, in an indictment, 22.
- ALIENS.
jury on trial of, 70. See JURORS.
- ALLEGIANCE.
oath of. See OFFICE AND OFFICERS.
- AMBIGUITY.
when indictment bad for, 10, 11.
- AMENDMENT.
indictments. See INDICTMENT.
- AMENDS.
tender of, 170.
- AMERCEMENT. See LEET, 327.
- ANCHORS. See LARCENY, 254, and MA-
LICIOUS INJURIES TO PROPERTY, 788.
- ANIMALS.
stealing of. See LARCENY.
maiming of. See MALICIOUS INJURIES
TO PROPERTY.
nuisances by. See NUISANCES.
- APOTHECARY. See MEDICAL PRACTI-
TIONER.
- APPREHENSION OF OFFENDERS. See
LARCENY and MALICIOUS INJURIES.
- ARMY. See MILITARY LAW.
- ARRAIGNMENT.
insane person, 586, 587.
standing mute, *ib.* 1010.
- ARRAY.
challenge to, of jurors, 85.

ARREST WITHOUT WARRANT.

Where Party found actually Committing an Offence.

malicious injuries, 746, 793.

larceny, 287.

Police Acts. See **POLICE (TOWNS)**.

On Suspicion of having Committed an Offence.

See **LARCENY** and **MALICIOUS INJURIES**.

By Constables.

See **LARCENY** and **MALICIOUS INJURIES**.

ARREST OF JUDGMENT. See **INDICTMENT—JUDGMENT**.**ARSON.** See **MALICIOUS INJURIES TO PROPERTY**.**ARTICLES OF WAR.** See **MILITARY LAW**.**ASSAULTS IN PARTICULAR CASES.**

as to assaults by shooting, wounding, or poisoning, or sending explosive substances, or throwing destructive substances, and for child murder, and concealment of birth, see **MALICIOUS INJURIES TO PERSONS**.

ASSESSORS, 327.**ATTAINDER.** See **PARDON**.**ATTAINT.**

of jurors abolished, 103.

ATTORNEY.

embezzlement by, 265.

BADGER BAITING. See **POLICE (TOWNS)**.**BAKERS.**

baking on the Lord's day. See **LORD'S DAY**.

BANISHMENT. See **PENAL SERVITUDE**.**BANK NOTES.**

larceny of, 236.

BANK OF ENGLAND.

embezzlement by clerks of, 264.

BANKS, etc., of Rivers, etc.

injuries to, 782.

BANKERS.

embezzlement by, 265.

BARNs.

burning of. See **MALICIOUS INJURIES TO PROPERTY**.

BARRISTER. See **MAINTENANCE**.

exempt from being jurors, 66.

BATHING. See **NUISANCE**.**BATTEL.**

appeal of, 1075.

BAWDY-HOUSES. See **NUISANCE**.**BEACON.** See **SHIPS**.**BEAR-BAITING.** See **POLICE (TOWNS)**.**BEASTS.**

stealing of, 230. See **LARCENY**.

BEES.

stealing of, 217.

BELLS.

nuisances from ringing of. See **NUISANCE**.

BILLS OF EXCHANGE. See **PROMISSORY NOTES**.

stealing of, 236.

BIRDS.

stealing of, 217, 234.

BIRTH.

concealment of. See **MALICIOUS INJURIES TO THE PERSON**.

BLACK LEAD.

stealing of, from mines, 242.
injuring mines, 780.

BLASPHEMY AND PROFANENESS.

as to blasphemous libels, see **LIBEL**.
an obscene book, see **OBSCENE BOOKS**.

BLOOD.

Corruption of. See **PARDON**.

BOATS.

stealing from, 254.

BONDS.

stealing of, 236.

BOROUGH. See **PARLIAMENT**.**BRASS.** See **METALS**.

stealing of, from buildings, etc., 240.

BREACH OF PRISON. See **PRISON BREAKING**.**BREAD.**

bakers not to bake bread, etc., on Sunday, 575.
nor sell bread, 576.
nor bake pies, etc., except between certain hours, *ib.*

BREAKING.

in case of a burglary. See **LARCENY**.

BREAKING GAOL. See **PRISON BREAKING**.**BRIBERY.** See **PARLIAMENT**.**BRIDGES.**

injuries, etc., to. See **MALICIOUS INJURIES TO PROPERTY**.

- BROKER.**
larceny by, 265. See AGENT.
- BROTHEL.** See NUISANCE.
- BUOYS.**
removing of. See MALICIOUS INJURIES.
- BURGLARY.**
as to burglary by statute and as to offences against the house of another, which fall short of burglary, see LARCENY.
- BURNING.** See MALICIOUS INJURIES TO PROPERTY.
- BUTCHER.**
not to kill or sell on the Lord's Day. See LORD'S DAY.
- CABLES, STEALING OF.** See LARCENY.
- CANALS.** See MALICIOUS INJURIES TO PROPERTY.
- CAPIAS.** See PROCESS.
- CAPTION OF INDICTMENT, 15.**
- CARRIERS.**
travelling on a Sunday, 577. See LORD'S DAY.
larceny by or from, 211, 227.
carrier may indict for goods stolen as his own property, 301.
person stealing his own goods from carrier, *ib.*
- CATS.**
not felony at common law to steal them, 217.
- CATTLE AND ANIMALS.**
stealing of, and killing with intent to steal, 230. See LARCENY.
injuring cattle, 787. See MALICIOUS INJURIES TO PROPERTY.
- CERTAINTY.**
what is required in an indictment, 10.
- CERTIFICATE.**
of the Apothecaries' Company, 892.
of marriage. See MARRIAGE.
- CHALLENGE TO FIGHT.** See LIBEL.
- CHALLENGE OF JURORS, 84.** See JURORS.
- CHAMPERTY.** See MAINTENANCE.
- CHAPEL.**
burning of. See MALICIOUS INJURIES TO PROPERTY.
- CHEATS AND FALSE PRETENCES.**
See LARCENY, 269.
- CHECK ON A BANKER.**
larceny or embezzlement of, 236.
obtaining money by false pretences on, 271.
- CHELSEA HOSPITAL.**
laying property in, in indictments, 27.
- CHILDREN AND INFANTS.**
marriage of. See MARRIAGE.
imprisonment of juvenile offenders. See JUVENILE OFFENDERS.
murder of, and concealment of birth of, see MALICIOUS INJURIES TO THE PERSON.
- CHOSSES IN ACTION.**
larceny of, 236.
- CHRISTIAN NAME.**
statement of, in an indictment, 22, 23.
- CHURCH OR CHAPEL.**
breaking into and stealing in churches. See LARCENY.
burning of. See MALICIOUS INJURIES TO PROPERTY.
not going to church, holding fairs, places of entertainment, travelling, taking and exercising ordinary callings, killing game, and serving process, etc., on a Sunday, and other profanations of that day. See LORD'S DAY.
- CLERGYMEN.**
cannot be jurors, 65.
- CLERK.**
larceny or embezzlement by, 256.
- CLERK OF JUSTICE OF THE PEACE, 174.**
- CLERK OF THE MARKET.** See MARKETS AND FAIRS.
- CLERK OF THE PEACE.** See JUSTICES OF THE PEACE.
- COACHES.** See POLICE (TOWNS).
- COALS AND COAL MINES.** See MINES.
as to stealing from, see LARCENY.
as to malicious injuries to, see MALICIOUS INJURIES TO PROPERTY.
- COCK-FIGHTING.** See POLICE (TOWNS).
- COFFEE SHOPS.** See POLICE (TOWNS).
- COLLIERY.** See MINES.
malicious injuries to, 780.
stealing in, 242.
- COMMISSION OF THE PEACE, 110.**
- COMMISSIONERS OF SEWERS.** See LOCAL GOVERNMENT.
- COMPOUNDING.**
compounding misdemeanours, 1009.
compounding informations, 53.

- CONCEALMENT OF BIRTH.** See MALICIOUS INJURIES TO THE PERSON.
- CONSTABLES.**
for power to apprehend under the Larceny Act and Malicious Injuries Acts, see those titles.
See also LIGHTING AND WATCHING.
- CONSTRUCTIVE POSSESSION, etc.**
in larceny, 201.
- CONTEMPT.** See ORDER.
power of justices to commit for, 142.
- CONVICTION.**
summary, in cases of larceny, 288. See LARCENY.
malicious injuries to property, 794.
- COPPER.**
stealing of, 240.
- COPY OF INDICTMENT, 39.**
- CORN.**
setting fire to a stack, etc., of corn, 775.
servants stealing their master's corn for his horses, 224.
- CORONER.**
for coroner's juries, see JURORS.
- CORPORATIONS.** See LOCAL GOVERNMENT,—OFFICE AND OFFICERS.
- CORRUPTION OF BLOOD.** See ATTAINDER.
- COSTS.**
costs of new trial, 1012.
costs in misdemeanours under Larceny Act, 298.
in malicious injuries to Person Act; 749.
in malicious injuries to Property Act, 798.
on indictment for libel, 348.
- COURT.**
court leet, 324. See LEET.
- CRIMINAL INFORMATION.** See INFORMATION.
- DAMAGING GOODS, etc.** See MALICIOUS INJURIES TO PROPERTY.
- DAY.**
statement of, in indictment, 28.
- DEAD ANIMALS.**
description of, in indictment, 32.
- DEAF AND DUMB.**
arraignment of deaf and dumb prisoner. See MUTE.
- DEALERS IN OLD METALS.** See METALS.
- DEBENTURE.**
for money, stealing of, 236.
- DEED.**
stealing of, 238.
- DEER.**
stealing of, etc. See LARCENY.
- DEFAMATION.** See LIBEL.
- DEFECTS.**
in indictment, when cured, 35.
in statement of venue, etc., 22.
- DEGREE.**
addition of, in indictment, 23.
- DEMANDING MONEY, etc., WITH MENACES.** See LARCENY, 245.
- DEMURRER.**
demurrer to an indictment, 35.
- DEPUTY.** See CLERK OF PEACE, JUSTICES, OFFICE AND OFFICER.
- DESERTER.** See MILITARY LAW.
- DESTROYING PROPERTY, etc.** See MALICIOUS INJURIES TO PROPERTY.
- DISORDERLY HOUSE.** See NUISANCE.
- DISTRINGAS.** See PROCESS.
- DOCUMENTS.**
stealing of, 236.
- DOGS.**
stealing of, 233.
- DROWNING.**
attempts to murder by, 753.
- DRUNKENNESS.**
when an excuse for a crime, 581, n. (a).
- DUCKS.**
stealing of, 234.
- DUMB PERSONS.**
standing mute, 1010. See MUTE.
- DWELLING-HOUSE.**
stealing in, 253.
breaking into, 248.
burning of, 768.
- ELECTION.** See PARLIAMENT.
- EMBEZZLEMENT.** See LARCENY.
- EMBRACERY.** See MAINTENANCE.
- ENGINES.**
destroying of. See MINES; MALICIOUS INJURIES TO PROPERTY.
- ESCAPE.** See PRISON BREAKING.
- EXCEPTIONS.**
statement of, in indictment, 30.
- EXCHEQUER BILLS.**
stealing of, 236.
- EXIGENT.**
process of. See PROCESS.

- EX OFFICIO.**
need not be alleged, 13.
- EXPLOSIVE SUBSTANCES.**
injuries to the person by, 758.
injuries to buildings by, 773. See also
GUNPOWDER, PETROLEUM.
- FACTOR.** See AGENT, BROKER.
pledging property, 266.
- FACTORIES.**
destroying works, etc., 775.
rioters destroying, 773.
stealing goods in a course of manufacture,
254.
- FAIRS.** See MARKETS AND FAIRS.
holding of on Sunday, 574.
- FALSE NEWS.** See LIBEL.
- FALSE PERSONATING.**
personation of soldiers, etc. See MILI-
TARY LAW.
of pensioners, 938.
of voters at elections, 1147, 1149, 1150,
1151.
- FALSE PRETENCES.** See LARCENY.
obtaining money, etc., by, 274.
- FALSE SIGNALS AND LIGHTS.**
exhibiting, 790.
- FALSE WEIGHTS,** 272.
- FEES.** See CLERK OF THE PEACE, JUSTICE
OF PEACE.
- FELONY, PUNISHMENT FOR.** See PE-
NAL SERVITUDE.
- FENCES.**
stealing of, 241.
injuries to, 780.
- FERN.**
setting fire to, 777.
- FERRETS.**
not the subject of larceny at common law,
217.
- FIGURES.**
when allowable in indictment, 31, 35.
- FINDING OF GOODS.**
larceny in case of, 221. See LARCENY.
- FIRE.**
Arson. See MALICIOUS INJURIES TO
PROPERTY.
- FISH AND FISHERIES.** See LARCENY,
and MALICIOUS INJURIES TO PRO-
PERTY.
stealing oysters, etc., from oyster-bed, 235.
dredging for, within limits of oyster fishery,
235. See LARCENY.
- FIXTURES.**
stealing of, 240, 264.
malicious injuries to. See MALICIOUS
INJURIES TO PROPERTY.
- FLOOD-GATES.**
destroying of, 782.
- FOREIGN LANGUAGE.**
libel, etc., in, how set out, 344.
- FRAMES.**
malicious injuries to. See MALICIOUS
INJURIES TO PROPERTY.
- FRAME-WORK KNITTERS.**
frame-breaking, 775.
- FRANKING OF LETTERS,** 1309.
- FRAUD.**
obtaining property by false pretences, and
as to frauds in general. See LARCENY.
- FREEHOLD.**
larceny of things of. See LARCENY.
- FRUIT AND FRUIT TREES.**
stealing of, 240-242.
malicious injuries to, 775-776.
- FUNDS.**
larceny of stock, 265.
- FURIOUS DRIVING.**
penalty for riding or driving furiously.
See POLICE (TOWNS).
- FURZE.**
setting fire to, 777.
- GAME.**
killing hares and rabbits, 233.
- GARDENS.**
larceny from, 240, 242. See LARCENY.
malicious injuries to, 778, 779. See MA-
LICIOUS INJURIES TO PROPERTY.
- GAS.** See LIGHTING AND WATCHING.
nuisances from, 1027. See NUISANCE.
- GATES.**
stealing, etc., of, 241. See LARCENY.
injuries, etc., to, 780. See MALICIOUS IN-
JURIES TO PROPERTY.
- GENERAL ISSUE.** See PLEA, JUSTICES.
- GLASS.**
stealing of, 240. See LARCENY.
- GOODS.**
how described in indictment, 32.
- GORSE.**
setting fire to, 777.
- GRAND JURORS.**
who may be, etc., 65. See JURORS.

GRAND LARCENY AND PETTY LARCENY.

distinction between, abolished, 226. See **LARCENY**.

GREENWICH PENSIONERS.

personating, etc., of, 938. See **MILITARY LAW**.

GUNPOWDER. See **MALICIOUS INJURIES TO PERSON**, 758; **TO PROPERTY**, 773.**GUNS.**

discharging loaded arms. See **MALICIOUS INJURIES TO THE PERSON**.

HACKNEY COACHES. See **POLICE (TOWNS)**.**HANGING.** See **JUDGMENT**.**HARBOUR.**

Damaging, filling up, etc., 782.

HARD LABOUR, PUNISHMENT OF.

in larceny, etc., 298.
malicious injuries to property, 798.
in offences against the person, 747.
perjury, 1245.
piracy, 1270.
under sentence of penal servitude, 1214.

HAY.

malicious burning of, 775. See **MALICIOUS INJURIES TO PROPERTY**.

HEDGES. See **FENCES**.**HOPS.**

destroying of hop binds, 778.

HOUSE.

stealing in, etc. See **LARCENY**.
arson of. See **MALICIOUS INJURIES TO PROPERTY**.
nuisances to. See **NUISANCE**.
malicious injuries to. See **MALICIOUS INJURIES TO PROPERTY**.

IDEM SONANS.

statement of name, 24.

IDIOT. See **LUNATIC**.**ILLNESS.**

of jurors, 98.

INDECENCY.

as to indecent libels, see **LIBEL**.

INDICTMENT.**I. What, 2.****II. What Offences indictable.**

all offences of a public nature indictable, 2.
private injury, 3.
breach of bye-law, *ib.*
offences against public statutes, *ib.*
offences against private statutes, 4.
statutes pointing out remedies, 4.

INDICTMENT—continued.**II. What Offences indictable—continued.**

offences against acts done under a statute, 5.

indictments for certain offences requiring the leave of a judge, *ib.*

III. Time of indicting.

on penal statutes, 5.
in general no limitation to, *ib.*

IV. Against whom an Indictment lies.

in general, 6.
corporation, *ib.*
ignorance of law or fact, *ib.*
accessories, infants, lunatics, married women, *ib.*

V. Who may be joined as Defendants in same Indictment.

in general, 6.
principal and accessories, 7.
how far parties may be separately found guilty, *ib.*
consequence of misjoinder, 8.
death of one defendant, *ib.*

VI. How many, and what Offences may be joined in same Indictment.

in high treason, 8.
in felonies, *ib.*
in misdemeanours, 9.
consequence of misjoinder, 10.
how cured by verdict, *ib.*
in some cases unnecessary to add counts, *ib.*

VII. General Requisites.

certainty in, necessary, 10.
consequences of want of, 11.
surplusage, *ib.*
degree of certainty, *ib.*
charge must not be too general, *ib.*
it must be special, 12.
certainty to every intent, *ib.*
charge must be explicit, *ib.*
and not repugnant, *ib.*
must be positive, and not by way of recital, *ib.*
or in the disjunctive, *ib.*
or argumentatively, 13.
duplicit, *ib.*
presumptions of law, *ib.*
facts taken notice of by the courts, *ib.*
conclusions of law, *ib.*
mere matters of evidence, *ib.*
matters of defence, *ib.*
facts in defendant's own knowledge, 14.
notice, *ib.*
request, *ib.*
evil intent, *ib.*
statutes, *ib.*
unnecessary matter, *ib.*
consequences of want of general requisites, 15.
unnecessary averment, *ib.*
duplicit, *ib.*

INDICTMENT—continued.

VIII. *Particular Requisites and Parts.*(1.) *The Caption.*

what, 15.
form of, 16.
venue in, *ib.*
the sessions, etc., *ib.*
amendment of, 17.

(2.) *The Venue.*

Venue, 17.
Where to be laid :
at common law, 17.
by statute, *ib.*
offences on borders of counties, *ib.*
begun in one county, and completed in another, 18.
begun in one part of the kingdom and completed in another, *ib.*
goods stolen at sea, 19.
detached parts of counties, *ib.*
conspiracy in, *ib.*
threatening letters, *ib.*
embezzlement, *ib.*
offences to persons or property in or upon coaches, etc., or vessels, etc., *ib.*
in towns corporate, 20.
in Wales, *ib.*
in Scotland or Ireland, 21.
In a foreign country, etc., *ib.*
defective venue, when cured, *ib.*
mode of stating venue, *ib.*
consequences of defective statement or omission of venue, 22.

(3.) *Name and Addition of Defendant.*

How to be stated :
in general, 22.
additions, 23.
consequence of misnomer, *ib.*

(4.) *Name and Description of Prosecutor and Third Persons.*

How to be stated :
when name known, 23.
when unknown, *ib.*
addition, *ib.*
dignity, *ib.*
bastards, 24.
idem sonans, *ib.*
in larceny, burglary, forgery, etc., *ib.*
corporations, *ib.*
partners, joint owners, and companies, etc., *ib.*
counties, inhabitants, etc., 26.
parish, township, etc., *ib.*
guardians of poor, *ib.*
turnpike trust, 27.
commissioners of sewers, *ib.*
Chelsea hospital, *ib.*
public service, *ib.*
post office, *ib.*
friendly societies, *ib.*
consequences of misnomer of prosecutor or third persons, 28.

INDICTMENT—continued.

VIII. *Particular Requisites, etc.—cont.*(5.) *Statement of Time, etc.*

How to be stated : 28.
day, *ib.*
year of the Queen, *ib.*
year set out by inference, *ib.*
hour, *ib.*
limited time, *ib.*
divers days, *ib.*
consequences of defective statement of time, 28.

(6.) *Statement of Place, 29.*(7.) *Statement of the Offence itself :*

general requisites, 29.
particular requisites, *ib.*

(8.) *Statement of Statutes, and Offences thereon, 29.*(9.) *Statement of Written Instruments.*

How to be stated : 31.
variances, 32.

(10.) *Statement of Chattels, Animals, Number, and Value.*

description of goods, 32.
animals, *ib.*
moneys, *ib.*
in general, 33.
number and quantity, *ib.*
value, *ib.*

(11.) *Statement of Technical Words.*

in general, 33.
"force and arms," 34.
"wickedly," *ib.*
"feloniously," *ib.*
"unlawfully," *ib.*
"knowingly," *ib.*

(12.) *Conclusion of Indictment at Common Law.*

in general, 34.
"against the statute," etc., *ib.*
"against the peace," etc., 35.
"crown and dignity," *ib.*

(13.) *Conclusion of Indictment for an Offence against a Statute, 35.*IX. *Defects in Indictments, how taken Advantage of or cured.*

defects in, how available, etc., 35.

X. *Mode of engrossing, etc., Names of Witnesses.*

mode of engrossing, etc., must be in English, etc., 35.
who to draw, *ib.*
names, etc., of witnesses, *ib.*

XI. *Presentment to, and finding of Bill before Grand Jury.*

presentment to, and finding of bill before grand jury, 36.
finding of, *ib.*
preferring a fresh indictment, *ib.*

INDICTMENT—*continued.*XII. *Quashing an Indictment.*

- when indictment may be quashed, 38.
- on application of prosecutor, *ib.*
- on application of defendant, *ib.*
- fresh indictment, 39.
- jury may be discharged from giving verdict on, *ib.*

XIII. *Amendment of Indictment.* See AMENDMENT.XIV. *Granting Copy of Indictment.*

- granting copy of, in general, 39.
- in treason, *ib.*
- in misdemeanours, 40.
- where postea, etc., lost, *ib.*
- office certificate of finding a bill for purpose of obtaining a judge's warrant, *ib.*
- list and addresses of witnesses on back of, *ib.*

XV. *Other Proceedings as to Indictments.*

- process to compel the defendants to answer it. See PROCESS.
- pleas and pleadings relative to indictments: for pleas, etc., in bar, see PLEAS and PARDON.
- the jury. See JURORS.
- as to judgment and proceedings, see JUDGMENT.

XVI. *Forms of Commencements and Conclusions of Indictments, etc., 41.*

INDUSTRIAL SCHOOLS.

The Industrial Schools Act, 1866.

- extent and interpretation of Act, 42.
- what is an industrial school, *ib.*
- what are the managers, *ib.*
- inspector of schools and assistant, *ib.*

Certified Industrial Schools.

- mode of certifying, 43.
- not to be certified as industrial and reformatory, *ib.*
- notice in the 'Gazette,' *ib.*
- copy of 'Gazette' evidence, *ib.*
- inspection of school, *ib.*
- alterations, etc., of buildings to be approved, *ib.*
- contribution by counties and boroughs to establishment and enlargement of schools, *ib.*
- mode of obtaining approval of secretary of state, *ib.*

Classes of Children to be detained in Certified Industrial Schools.

- children under 14 years of age found begging, etc., 44.
- children under 12, charged with offences, *ib.*
- refractory children under 14 in charge of parents, *ib.*
- refractory children under 14 in workhouses, pauper schools, etc., *ib.*

INDUSTRIAL SCHOOLS—*continued.**Order of Detention.*

- form and contents of order sending child to school, 45.
- duties of managers towards the child, *ib.*
- religious persuasion of child, *ib.*
- temporary detention in workhouse, etc., *ib.*
- power to parent to remove child on account of religious persuasion, *ib.*
- order for detention in school of parochial board, 46.
- order to be warrant for conveyance and detention, *ib.*
- expenses of conveyance to school, *ib.*
- evidence of order of detention, *ib.*

Management of School.

- religious instruction in school, 46.
- lodging child out of school, *ib.*
- licence for living out of school, *ib.*
- power to apprentice child, 47.
- rules of school to be approved by secretary of state, *ib.*
- printed copy of rules to be evidence, *ib.*
- certificate evidence of reception in school, etc., *ib.*
- liability to removal under poor laws not affected, *ib.*

Offences at School, etc.

- refusal to conform to rules, 47.
- penalty on child escaping from school, 48.
- on persons inducing offenders to escape, *ib.*

Expenses of Children in Schools.

- power to treasury to contribute towards custody, etc., of children, 48.
- to prison authority to contract for reception of children, *ib.*
- to guardians of poor, etc., to contribute, *ib.*
- recovery of cost of maintenance in schools in Scotland, *ib.*
- contribution by parent, etc., 49.
- order for enforcement of, etc., *ib.*
- secretary of state may remit the payment, *ib.*
- variation of order, *ib.*

Discharge, etc., of Children from School.

- detention to cease at age of 16, 50.
- transfer to another school by secretary of state, *ib.*
- discharge by secretary of state, *ib.*

Withdrawal, etc., of Certificate of School.

- power for secretary of state to withdraw certificate, 50.
- resignation of certificate by managers, *ib.*
- gazetting and evidence of withdrawal, etc., *ib.*
- cesser of reception of children on notice, *ib.*
- discharge of children detained, 51.

INDUSTRIAL SCHOOLS—*continued.*

Expenses of Prison Authorities.
how defrayed, 51.

Miscellaneous.

acts regulating procedure, 51.
use of forms in schedule, *ib.*
service of notices on managers, *ib.*
application of Act to existing schools, *ib.*
forms, *ib.*

INFANTS.

child murder and concealment. See MALICIOUS INJURIES TO THE PERSON.
marriage of. See MARRIAGE.

INFERIOR COURTS. See LEET.

INFORMATION.

Compounding Informations on Penal Statutes.
in general, 53.
what justices may hear and determine these offences, 54.
To what cases 18 Eliz. c. 5, s. 4, extends, *ib.*

INJURIES, MALICIOUS. See MALICIOUS INJURIES TO PERSONS AND PROPERTY.

INNUENDO. See LIBEL.

INQUEST AND INQUISITION.
what, etc., 55.

INSANITY, etc. See LUNATICS.

INSPECTION.

when not compelled in criminal cases, 56.
books of public nature, *ib.*
records of courts of law, *ib.*
books of quarter sessions, *ib.*
parish books, custom-house, post office, etc., books, *ib.*
county rates, 57.
court rolls, etc., *ib.*
corporation books, *ib.*
university documents, *ib.*
documents ordered to be deposited with clerk of peace for, *ib.*
practice as to, *ib.*
copy of indictment, *ib.*

ISSUE. See PLEA.

JOINDER OF OFFENCES AND DEFENDANTS. See tit. INDICTMENT.

JOINT-STOCK COMPANY.

property in, how described in indictment.
See INDICTMENT.

JOINT TENANT.

larceny by. See LARCENY.

JUDGMENT.

what, 58.
when court divided in opinion, *ib.*

JUDGMENT—*continued.*

what court to pronounce, *ib.*
at what time pronounced, *ib.*
arresting the, *ib.*
appearance of defendant, *ib.*
respite sentence or execution, *ib.*
presence of defendant, 58, 59.
compelling attendance of defendant to receive, 59.
compromise, *ib.*
several defendants, *ib.*
defendant convicted of several offences, 60.
the act of pronouncing, *ib.*
nature of, *ib.*
form and record of, 62.
altering and amending, 63.
reversal of, 61, 63.

JURISDICTION.

of justices. See JUSTICES.
of constables. See LEET, etc.

JURORS.

trial by jury, 63.

I. *Grand Jurors, and the Qualifications, etc., of, and Exemptions from serving.*

what, 64.
number, *ib.*
qualifications, 65.
in Wales, *ib.*
exemptions from serving, *ib.*
prescriptive exemptions, 66.
aliens, *ib.*
convicts, or outlaws, etc., disqualified, *ib.*
justices of peace, *ib.*
inhabitants of Westminster at sessions, *ib.*
qualification of jurors in liberties, cities, and boroughs, to remain as before, 67.
qualification in London, *ib.*
persons, unless qualified to serve as jurors in civil causes, not to be returned to serve on trials for capital offences, *ib.*
in boroughs, *ib.*
exemptions in, *ib.*
prescriptive exemptions in boroughs abolished, *ib.*
Quakers, Moravians, Separatists, 68.
members of Barbers' Company, *ib.*
jurors not compelled to attend twice, etc., *ib.*
persons not named in warrant, etc., *ib.*
compelling attendance of, *ib.*
mode of swearing, etc., *ib.*
time of service, 69.
preferring bill before, *ib.*

II. *Petit Jurors.*

what, 69.
number, 69.
qualifications, *ib.*
oath of, *ib.*
affirmation of, 70.

III. *Special Jurors, 70.*IV. *Juries on Trials of Aliens, etc.*
juries de medietate, 70.

JURORS—*continued.*V. *Other Juries.*

- in the leet, 71.
- on the coroner's inquest, *ib.*
- on inquiries of forcible entry, *ib.*
- de ventre inspiciendo, *ib.*, 65 n. (a).

VI. *Lists of Jurors.*

- clerk of peace to issue warrants to high constables in July, 71.
- clerk of the peace to annex printed forms of precepts and returns to his warrants, *ib.*
- justices of division may order extra-parochial place to be annexed to adjoining parish or township, for purposes of this Act, 72.
- churchwardens and overseers to make out lists of persons qualified to serve on juries, with their residences, titles, etc., *ib.*
- lists to be fixed on church doors, and kept by churchwardens for inspection, *ib.*
- lists to be reviewed and allowed, etc., at petty sessions to be held in the last week of September, 73.
- petty sessions not to alter any list without notice to the party to be affected, *ib.*
- power of adjournment, *ib.*
- lists, after allowance by petty sessions, to be delivered to justices' clerk, and by him to next quarter sessions, *ib.*
- justices' clerk to send list to clerk of the peace, 74.
- tax assessments and poor-rates to be inspected, *ib.*
- lists to be kept by clerk of peace, and copied into a book to be delivered to the sheriff, *ib.*
- book to be called 'The Jurors' Book,' *ib.*
- sheriff to deliver it to his successor, *ib.*
- to be used for one year from 1st January, *ib.*
- penalties on churchwardens and overseers for neglecting to make out lists, etc., *ib.*
- penalties on clerks of peace and sheriffs neglecting their duty, 75.
- expenses of jury list may be paid out of the poor-rates, 76.

VII. *Summoning, Returning, and Attendance of Jurors, Views, and Copy of Panel, etc.*

- clause in commission as to, 77.
- at adjourned sessions, 78.
- in boroughs, *ib.*
- provisions of 6 Geo. 4, c. 50, *ib.*
- form of venire facias, *ib.*
- and of precept for jurors at gaol deliveries and sessions, *ib.*
- want of hundredors, 79.
- juries to be returned from 'Juror's Book' by sheriff, and by coroners and elisors, *ib.*

JURORS—*continued.*VII. *Summoning, etc.—continued.*

- new panel ordered by judge during assizes, 79.
- juries in all criminal courts to be returned as before, *ib.*
- copy of panel to be delivered to parties indicted for high treason, *ib.*
- exceptions, *ib.*
- judge of assize, etc., may direct the same panel for the criminal and civil sides, 80.
- and may direct two sets of jurors to be summoned, one to attend at beginning of assize, and the other to attend the residue, to serve indiscriminately on criminal and civil sides, *ib.*
- summons shall be made out either for first or second set, *ib.*
- in case of views, judge to appoint trial during the attendance of the viewers, *ib.*
- where jurors are to view lands, etc., court may order special writs of scire facias, distringas, or habeas corpora, 81.
- viewers, in case of appearance, to be sworn upon the jury first, *ib.*
- jurors to be summoned ten days before day of attendance, *ib.*
- special jurors, three days, *ib.*
- time for summoning jurors for London, etc., as heretofore, *ib.*
- all jurors may be summoned by post, 82.
- provision with regard to summonses so sent, *ib.*
- sheriffs to be allowed costs of summonses, *ib.*
- extent of Act 25 & 26 Vict. c. 107, *ib.*
- balloting for juries, *ib.*
- sheriff indemnified in returning unqualified person not liable, *ib.*
- if sheriff return one not in the 'Jurors' Book,' or if clerk of assize record appearances when the party did not appear, they may be fined, *ib.*
- sheriff, etc., to register names of jurors who have served, and give certificates, *ib.*
- clerk of peace to make out list of all who serve at sessions on grand or petty juries, 83.
- and transmit same to sheriff, to be registered in 'Jurors' Book,' *ib.*
- certificates of services to be given by clerk of peace, *ib.*
- jurors not to be summoned again within certain periods, *ib.*
- nor to quarter sessions, *ib.*
- no money to be taken to excuse persons from serving, *ib.*
- none to be summoned but those named in the warrant, 84.
- penalties for neglect of duty of officers, *ib.*
- jury process abolished, *ib.*
- precept by judges of assize, *ib.*
- printed panel to be prepared, *ib.*

JURORS—continued.

VII. *Summoning, etc.—continued.*

other proceedings the same as before, 84.

VIII. *Challenge of Jurors.*(1.) *Several Kinds of Challenge.*

two kinds of challenge, 85.

To the Array :

principal challenge to the array, *ib.*

challenge to the array for favour, 86.

To the Polls :

peremptory challenge, *ib.*

not allowed to the Queen, *ib.*

number allowed, *ib.*

when allowed against the Queen, *ib.*

not allowed in collateral issues, 87.

or misdemeanours, *ib.*

in cases of treason, *ib.*

withdrawal of one challenge to challenge another, *ib.*

every challenge beyond the legal number shall be void, *ib.*

principal challenge, *ib.*

peer sworn, *ib.*

estate, *ib.*

alienage, *ib.*

age, *ib.*

female, *ib.*

kindred, *ib.*

affinity, 88.

godfathers, *ib.*

interest in title, *ib.*

prejudice, *ib.*

malice, *ib.*

prior verdict by the juror, *ib.*

indictor, *ib.*

juror having been an arbitrator in the cause, *ib.*

counsel, etc., *ib.*

eating and drinking at the cost of a party, *ib.*

parishioner, *ib.*

labouring a juror, 89.

inhabitant of a town where a riot has occurred, *ib.*

fellow-servant, *ib.*

attainder or conviction, *ib.*

outlawry, *ib.*

wrongly sworn, *ib.*

want of qualification to be cause of challenge, but not the want of freehold, 90.

nor to extend to special jurors, *ib.*

persons unqualified, *ib.*

Challenge to the Polls for favour, 90.

(2.) *Mode of taking the Challenge, 90.*(3.) *How the Challenges shall be tried, 93.*IX. *Of Talesmen, 93.*X. *Demeanour of Jurors in giving their Verdict, etc.*

jurors to be kept together without meat or drink, 94.

may re-examine witnesses, 95.

may hear no evidence but in court, *ib.*

JURORS—continued.

X. *Demeanour of Jurors, etc.—continued,*

may be discharged without giving verdict, 96, 97, 98.

may be fined for saying they are agreed when they are not, 96.

casting lots for their verdict, *ib.*

giving verdict without evidence, *ib.*

juror may be witness, *ib.*

private verdict, 97.

special verdict, *ib.*

jurors to try not the law, but the fact, *ib.*

finding against evidence, *ib.*

varying from the verdict, *ib.*

verdict finding an impossibility, *ib.*

verdict, how far to be taken strictly, *ib.*

where they cannot agree, 97, 98.

affidavit after verdict, 98.

juror taken ill, *ib.*

improper discharge of jury in misdemeanour no acquittal, 99.

XI. *Indemnity and Punishment of Jurors.*

threatening a juror, 99.

jurors not appearing, *ib.*

present, and refusing to appear, or withdrawing, *ib.*

jury not appearing, 100.

action against jurymen for verdict, *ib.*

whether a juror may be prosecuted for a verdict in a criminal matter, *ib.*

whether they may be fined for their verdict, *ib.*

Bushel's case, 22 Car. 2, ib.

courts of nisi prius, etc., in London may fine jurors, *ib.*

sheriffs, etc., may fine jurors for non-attendance, *ib.*

fine on persons summoned to serve on juries in inferior courts not attending, 101.

leviable by distress and sale, *ib.*

to be paid to proper officer of court, to be disposed of as other fines of court, 102.

how fines to be recovered and applied, *ib.*

fines remitted, 103.

decisions as to fining, *ib.*

writs of attaint abolished, *ib.*

embracers and corrupt jurors punishable by fine and imprisonment, *ib.*

XII. *Provisions of Jury Act as to Recovery of Penalties, Actions, etc.*

form of conviction, 103.

not to be quashed for want of form, *ib.*

remedy for irregularity causing damage, 104.

persons sued may plead the general issue, *ib.*

costs, *ib.*

actions to be commenced within six months, with one month's notice, *ib.*

XIII. *Saving Clauses in Jury Act.*

not to affect the Acts relating to Quakers

JURORS—continued.

XIII. *Saving Clauses in Jury Act—cont.*
and Moravians, 104.
not to affect powers unrepealed, *ib.*

XIV. *Forms.*

precept for returning lists of jurors, 105.
form of return, 106.
conviction under 6 Geo. 4, c. 50, *ib.*
challenge to the array, because the sheriff
is of kindred to one of the parties, *ib.*
challenge because panel was returned at
instance of party, *ib.*

JUSTICES OF THE PEACE.

who are, 107.
nature of office, *ib.*
his record shall not be gainsaid, *ib.*
cannot make a deputy, *ib.*
his certificate not traversable, *ib.*

I. *The Office of Conservators of the Peace at the Common Law before the Institution of Justices.*

conservators by election, 108.
conservators by office, 109.
Lord Chancellor and justices of King's
Bench, *ib.*
every court of record, *ib.*
justices of peace, *ib.*
sheriff, *ib.*
coroners, *ib.*
constables, *ib.*
conservators by tenure, *ib.*
conservators by prescription, *ib.*
mayors, *ib.*
powers of conservators, 110.
their duty, *ib.*
conservators of the peace appointed by
the Queen, *ib.*

II. *Their Commission, and how and by whom appointed.*

three kinds of justices of the peace, 110.
appointment of, by commission, 111.
form of commission, *ib.*
jurisdiction of, out of sessions, *ib.*
in sessions, 112.
custos rotulorum, 113.
justices appointed by the Queen, *ib.*
in the county palatine, *ib.*
in cities, boroughs, etc., *ib.*
doubtful whether the Queen can delegate
the power of appointing justices, *ib.*
must be in the most clear and express
language, *ib.*
in a particular district, *ib.*
in boroughs within "Municipal Corpora-
tions Act," *ib.*
police magistrate with salary, 114.

III. *Who may be Justices, 114.*IV. *Qualification of Justices, and Oath of.*

qualification as regards estate, 114.
oath as to estate, 115.
oath to be recorded, *ib.*
meaning of the word "encumbrance," *ib.*

JUSTICES OF THE PEACE—continued.

IV. *Qualification of Justices, etc.—cont.*

copy of oath, *ib.*
evidence of, 115.
acting without taking such oath, 116.
proof of qualification on defendant, *ib.*
acts of justice not qualified not absolutely
void, *ib.*
in boroughs, 118.
defendant to specify lands not contained
in the oath in action against him for
being disqualified, *ib.*
plaintiff may discontinue such action, *ib.*
lands not mentioned in oath or notice not
allowed, *ib.*
lands encumbered, *ib.*
qualification by rent only, *ib.*
action discontinued, *ib.*
only one penalty, *ib.*
subsequent action for prior offence, *ib.*
limitation of actions, 119.
places excepted, *ib.*
persons excepted, *ib.*
peers, etc., *ib.*
eldest son, or heir apparent of any peer, *ib.*
or person qualified to serve as M.P., *ib.*
or officers of board of green cloth, etc., *ib.*
heads of houses, etc., *ib.*
borough justices, *ib.*
justices becoming disqualified, 120.

V. *Oaths of Office.—Allegiance, Supremacy, and Abjuration, etc. See also OFFICE AND OFFICERS.*

oath of office necessary, 121.
proviso for such as have once taken oaths
under a *dedimus potestatem*, *ib.*
justices not obliged to take and subscribe
oaths more than once during a reign, *ib.*
form of oath, 122.
in boroughs under "Municipal Corpora-
tions Act," *ib.*
oath of allegiance, supremacy, and abjura-
tion, *ib.*
different oath for Roman Catholics, *ib.*
declaration in lieu of sacramental test, *ib.*
indemnity for not taking in time, *ib.*

VI. *How Office of, determined.*

officer, how determinable, 123.
how far dependent on Queen's demise, *ib.*
officers in corporations keep their office in-
dependent of Queen's demise, *ib.*
a new dignity being conferred does not
determine the office, *ib.*
warrant of justice who is dead, *ib.*

VII. *Their Jurisdiction, and Duties of.*(1.) *The local Limits of.*

justices for counties, ridings, and divi-
sions, 124.
in general, 124.
when out of county, *ib.*
when a justice may act in his county for
an offence committed out of it, *ib.*

JUSTICES OF THE PEACE—*continued.*VII. *Jurisdiction of, etc.—continued.*

- justices for counties at large empowered to act for such counties in cities, etc., 125.
- justices for adjoining counties may act for one though living in the other, *ib.*
- in cities, etc., being a county, or having exclusive jurisdiction, 126.
- execution of warrants, *ib.*
- in detached parts of counties, *ib.*
- expenses how met, 127.
- in boroughs not having a separate quarter sessions, *ib.*
- having such court, then a concurrent jurisdiction, unless specially exempt, *ib.*
- where borough or other local jurisdiction has ceased, 128.
- in exclusive jurisdictions, *ib.*
- backing warrants, *ib.*
- indorsement in backing a warrant, 129.
- from Ireland to England, and *vice versa*, *ib.*
- Isles of Man, Guernsey, etc., *ib.*
- Scotland, 130.
- backing warrants in cases of summary conviction, *ib.*
- seashore, *ib.*
- jurisdiction ousted only by express words, *ib.*
- ouster of jurisdiction, 130, 131.
- justices of boroughs, 131.

(2.) *Jurisdiction of, in respect of the Description of Justices, and how far a Justice may act in his own Case.*

- where a particular description of justices only should act, 132.
- "next justice," *ib.*
- justice "in or near," *ib.*
- justices of a division, *ib.*
- "any two justices," *ib.*
- quorum, *ib.*
- "court" does not mean justices out of session, *ib.*
- superiors not intended where inferior first mentioned, 133.
- priority of authority, *ib.*
- justices acting in their own case, *ib.*
- in some cases empowered to act, 134.

(3.) *Jurisdiction of, in respect of their Number.*

- when two justices may act, 135.
- when one may act, *ib.*
- in cases of summary convictions, *ib.*
- in issuing warrants, *ib.*
- when justices should act in the presence of each other, *ib.*

(4.) *Jurisdiction of, in respect of the Offence or Injury complained of, and their Duties herein.*

- jurisdiction and duties of, in general, 135.
- by their commission, 136.

JUSTICES OF THE PEACE—*continued.*VII. *Jurisdiction of, etc.—continued.*

- by statutes, 136.
- powers watched with jealousy, 137.
- discretionary power, *ib.*
- imperative duty, 138.
- where matter of right in question, *ib.*
- place of holding inquiry not open court, 139.
- right of counsel and attorneys, etc., to act before justices, 139, 140.
- justices should make a record of proceedings, 140.
- jurisdiction should appear on record, *ib.*
- convictions, *ib.*
- orders, *ib.*
- informer's oath, *ib.*
- confession, *ib.*
- number of witnesses, *ib.*
- credible witness, *ib.*
- power to administer an oath, *ib.*
- examination, 141.
- summons and warrant, *ib.*
- depositions, *ib.*
- copies, *ib.*
- power to apprehend without warrant, *ib.*
- search-warrant, *ib.*
- bail, *ib.*
- recognizances, 142.
- compelling attendance of witnesses, *ib.*
- supersedeas, *ib.*
- amendment, *ib.*
- commitment, *ib.*
- to what prison, *ib.*
- time of imprisonment, *ib.*
- the law favours liberty, *ib.*
- damages, 143.
- treble damages, *ib.*
- mitigating penalties, *ib.*
- costs, *ib.*
- distress and sale, *ib.*
- overplus, 144.
- second offence, *ib.*
- estreating fines, *ib.*
- adjournment of proceedings, *ib.*
- binding to good behaviour, *ib.*

(5.) *Jurisdiction of, ex Officio.*

- taxes—land-tax, 144.
- turnpike-roads, *ib.*
- guardians of poor, *ib.*

VIII. *How, and in what Cases, punished criminally.*

- indictment, or information, when it lies against, 144, 148.
- putting him out of commission, 145.
- fraud or misconduct, *ib.*
- error in judgment, *ib.*
- acting partially or corruptly, 146.
- refusing to act, 147.
- false return to mandamus, 148.
- other misbehaviour, *ib.*
- specific grounds must be laid against the magistrate, *ib.*

JUSTICES OF THE PEACE—*continued.*

VIII. *How, etc., punished criminally—cont.*
 not to be punished both ways, 149.
 practice as to applying for a criminal information against a justice, *ib.*
 time of motion, *ib.*
 exculpatory affidavit, *ib.*
 notice of motion, *ib.*
 costs on, 150.
 when a justice is convicted on an information, he must appear in person, *ib.*

IX. *Of Compelling Justices to Act.*
 compelling justices to act, 150.
 application for a rule to Queen's Bench, *ib.*
 must be a refusal to act, 151.
 decision upon a matter of fact, *ib.*
 on a matter of law, *ib.*
 to state special case, *ib.*
 cases upon mandamus, *ib.*
 mandamus refused, 152.
 mandamus granted, 153.
 practice as to mandamus, 154.

X. *Actions against.*

(1.) *When an Action lies.*
 when he acts judicially, 155.
 liability where discretion exercised, *ib.*
 in cases of warrants for payment of poor-rates, *ib.*
 of warrants upon convictions or orders confirmed on appeal, *ib.*
 for acts within jurisdiction, 156.
 for acts not within jurisdiction, *ib.*
 no action lies for acts done under a conviction unreversed, 157.
 remedy if action brought, *ib.*
 enforcing conviction or order after the decision of the superior court, *ib.*
 cases with respect to actions against justices, 158.
 where the justice acts ministerially, 159.
 where he acts as a judge of record, 160.
 where conviction good, but commitment or distress bad, *ib.*
 where conviction quashed, 161.
 damages recoverable, *ib.*
 to recover back an improper fee, *ib.*
 action against magistrate not qualified, *ib.*
 liability of a justice at sessions for plans of a gaol, *ib.*
 liability of, on a covenant for expenses of a bridge, *ib.*

(2.) *Notice of Action.*
 notice of action necessary, 162.
 service of, *ib.*
 form of, *ib.*
 uniformity of notice of action in all cases, 162.
 effects of these enactments not restrained by another Act, *ib.*
 what justice within the Act, *ib.*

JUSTICES OF THE PEACE—*continued.*X. *Actions against—continued.*

what acts entitle a justice to notice of action, 163.
 when no notice necessary, 164.
 statute applies only to acts done, *ib.*
 applies to actions on *assumpsit*, *ib.*
 form of notice, 165.
 mere letter not enough, *ib.*
 describing process, *ib.*
 parties to, *ib.*
 form of, *ib.*
 variance in facts, 166.
 must show an action will be brought, and not be a merely conditional notice, 167.
 indorsement on notice of name, etc., of attorney, *ib.*
 attorney de facto, *ib.*
 where plaintiff an infant, 168.
 service of notice, *ib.*
 time for serving, *ib.*
 proof of service, *ib.*
 waiver of, *ib.*

(3.) *The Limitation of Actions.*

in general, 168.
 general limitation of actions under local and personal Acts, *ib.*
 construction of Act, *ib.*
 within six months, *ib.*

(4.) *Venue.*

must be laid in county where fact was committed, 169.

(5.) *Plea of General Issue.*

plea of general issue allowed, 169.
 repeal of provision in local and personal Acts allowing general issue, *ib.*

(6.) *Tender of Amends and Payment into Court.*

tender and payment, 170.

(7.) *Damages.*

damages, 171.

(8.) *Costs.*

costs, 171.
 repeal of provisions in local and personal Acts giving double and treble costs, 172.
 costs only between party and party allowed, *ib.*

(9.) *Consequences of Defect in Plaintiff's Proofs.*

nonsuit or verdict for defendant, 172.

XI. *Slandering or Abusing etc., a Justice.*

proceedings for, 172.
 indictment for, *ib.*
 information for, 173.
 commitment for, *ib.*
 assault on magistrate in execution of office, *ib.*

XII. *Clerks to.—Fees of Justices and their Clerks.*

power to appoint clerks, 174.
 clerk no permanent office, *ib.*

JUSTICES OF THE PEACE—*continued*.XII. *Fees of Justices, etc.—continued*.

- fees to be taken by justices, 174.
- justices to settle a table of fees, *ib*.
- clerks taking other fees, 175.
- penalty for, *ib*.
- tables to be deposited with clerks of peace, *ib*.
- limitation of actions, *ib*.
- in Middlesex, *ib*.
- regulations as to payment of clerks' fees, 175, 176.
- metropolitan police, 176.
- salaried justices in boroughs, *ib*.
- fees of justices' clerks in boroughs, *ib*.
- consequences of taking fees improperly, *ib*.

JUVENILE OFFENDERS.

- summary convictions under age of fourteen, 177.
- when justices may dismiss the accused, *ib*.
- justices to ask if accused desires a jury, *ib*.
- power to justices to hear and determine, 178.
- one magistrate sufficient in certain cases, *ib*.
- bar to further proceedings, *ib*.
- mode of compelling appearance of, *ib*.
- power to remand and take bail, *ib*.
- application of fines, *ib*.
- summoning and attendance of witnesses, *ib*.
- service of summons, 179.
- form of conviction, *ib*.
- no *certiorari*, *ib*.
- convictions to be returned to quarter sessions, *ib*.
- no forfeiture upon conviction, *ib*.
- restitution of property, *ib*.
- recovery of penalties, *ib*.
- expenses of prosecution, 180.
- orders for payment of expenses, *ib*.
- costs and expenses in boroughs, 181.
- proceedings against persons acting under the statute, *ib*.
- extent of Act, *ib*.
- whipping, 181, 182.
- schedule of forms, 182.
- certificate of dismissal, *ib*.
- form of conviction, *ib*.

KING'S BENCH.

- powers of judges as conservators of peace, 109.

LAMPS. See LIGHTING AND WATCHING.

LANDS DRAINAGE ACT.

- appeal to quarter sessions, 182.
- arbitration, 183.
- decision of questions by justices or arbitration, *ib*.
- recovery of penalties, *ib*.
- other provisions, *ib*.
- penalty for draining into sewers without consent of commissioners, *ib*.

LANDS DRAINAGE ACT—*continued*.

- other provisions, 184.
- dissent of adjoining owner, *ib*.
- result of decision, *ib*.
- duties of justices or arbitrators, *ib*.
- owner may clear or divert drains, 185.
- penalty for injuring drains, *ib*.
- other provisions, *ib*.

LANDS CLAUSES CONSOLIDATION ACT.

- meaning of words "justices" and "two justices," 185.
- amount of compensation, how to be ascertained, *ib*.
- certificate to be evidence of capital subscribed, *ib*.
- disputes as to compensation, how to be settled, *ib*.
- method of proceeding, *ib*.
- appointment of umpire, 186.
- provision in case of parties absent from the kingdom, *ib*.
- appointment of surveyor, *ib*.
- declaration by surveyor, *ib*.
- estimation of purchase-money or compensation, *ib*.
- promoters to enter upon making a deposit, etc., 187.
- penalty on entering before payment, *ib*.
- decision not conclusive as to right of entry, 188.
- if no meeting of the parties, etc., surveyor to determine amount of compensation, *ib*.
- release of part of lands from charge, *ib*.
- service of notices, *ib*.
- penalties to be recovered summarily, *ib*.
- penalties to be levied by distress, 189.
- distress, how levied, *ib*.
- application of penalties, *ib*.
- distress against treasurer, *ib*.
- want of form in distress, *ib*.
- penalties sued for within six months, *ib*.
- penalty on witnesses making default, *ib*.
- form of conviction, 190, 191.
- want of form in proceedings, 190.
- appeal to quarter sessions, *ib*.
- perjury, *ib*.

LANDLORD AND TENANT.

- larceny by tenants or lodgers, 264.

I. *The Recovery of Possession of Premises on Tenants deserting them.*

- tenants deserting premises, justices may give possession if rent in arrear, etc., 191.
- appeal, 192.
- provisions extended to half-year's rent in arrear, and although no express right of re-entry, *ib*.
- in metropolitan police district, 192, 606.
- complaint on oath, 192.
- record of proceedings, 193.
- a protection to justices, *ib*.

LANDLORD AND TENANT—*continued.*

- I. *Recovery of Possession, etc.—continued.*
 what a deserting, etc., 193.
 appeal and restitution, *ib.*
 information or request on justices to view premises, *ib.*
 notice to be affixed on premises, 194.
 record of proceedings, *ib.*
- II. *Recovery of Possession on Determination of Tenancy.*
 when tenant or occupier of premises, where there is no rent, or where the rent does not exceed £20 a year, refuses to give possession, landlord may give him notice of his intention to proceed to recover possession, 194.
 if tenant does not appear, or fails to show cause why he does not give possession, justices may issue warrant directing constables to give landlord possession, 195.
 mode of serving summons, *ib.*
 how execution of warrants of possession may be stayed, 196.
 proceedings on bond in actions of trespass, *ib.*
 protection of justices, constables, etc., *ib.*
 where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity, *ib.*
 but be liable in an action on the case for special damage proceeding from irregularity, *ib.*
 interpretation clause, 197.
 decision under the Act, *ib.*
Schedule to the 1 & 2 Vict. c. 74, ib.

LARCENY.

- definition of offence, 198.
 simple or compound, *ib.*
 grand or petit, distinction between, now abolished, 199.
 offence of, as extended by statute, *ib.*

I. AT COMMON LAW.

what, 201.

(1.) *The Taking.*

- must be an actual taking from the possession of owner, 201.
 of actual and constructive possession, *ib.*
 the taking where the offender has a bare charge, 202.
 where master has neither property nor possession in the goods, 203.
 the taking where the possession of the goods has been obtained *animo furandi*, 204.
 must not be a parting with the ownership, 207.
 if credit given, no larceny, *ib.*
 must be an original felonious design, 209.
 felonious intent, question for a jury, *ib.*
 obtaining money, etc., under false pretences, a misdemeanour, etc., *ib.*

LARCENY—*continued.*

I. AT COMMON LAW.

(1.) *The Taking—continued.*

- no acquittal on the ground that the case proved amounts to larceny, 209.
 the taking, where possession of goods has been obtained *bond fide* without any fraudulent intention in first instance, *ib.*
 the taking, where the offender has more than a special property in the goods, 212.
 a man stealing his own goods, 213.
 husband and wife, *ib.*

(2.) *The Carrying Away.*

- there must be a carrying away, 214.
 least removal from the spot is sufficient, *ib.*
 mere change of position not sufficient, *ib.*
 offence complete, though the defendant afterwards return the thing, 215.
 where distinct asportations by several, *ib.*

(3.) *The Goods taken.*

- at common law, the property must be personal, and of value, 216.
 chattels real, *ib.*
 the goods must be the subject of property, *ib.*
 the goods must be of some value, *ib.*
 choses in action, *ib.*
 domestic animals, birds, etc., *ib.*
 produce of, *ib.*
 animals *feræ naturæ*, 217.
 animals of a base nature, *ib.*

(4.) *The Owner.*

- in general, 217.
 stealing from the thief, 218.
 stealing pheasants from an unqualified person, *ib.*
 alien, *ib.*
 waifs, wreck, etc., *ib.*

(5.) *Against Owner's Consent.*

- the taking must be against owner's will, 218.

(6.) *The Felonious Intent.*

- there must be a felonious intent, 219.
 the mind maketh a felony, *ib.*
 claim of right, *ib.*
 trespass, 220.
 mixing goods with others, *ib.*
 finding, 221.
 doing an act openly doth not make it the less a felony, 223.
 returning the goods, *ib.*
 stealing through necessity, *ib.*
 what the intent must be, 224.
 intention must exist at the time of taking, *ib.*
 intention, a question for the jury, *ib.*

II. LARCENY, ETC., BY STATUTE.

- repeal of former statutes, 225.
 interpretation clause of the 24 & 25 Vict. c. 96, *ib.*

LARCENY—*continued.*

- II. LARCENY, ETC., BY STATUTE—*continued.*
 distinction between grand and petty larceny abolished, 226.
 larceny by bailees, 227.
 punishments for simple larceny, 228.
 indictments for several takings, *ib.*
 punishment after previous convictions, 229.
 larceny of cattle and other animals, 230.
 birds, beasts, or other animals, 234.
 of written instruments, 236.
 of things attached to, or growing on land, 240.
 from mines, 242.
 from the person and other like offences, 243.
 threatening letters, 245.
 sacrilege, burglary, and housebreaking, 248.
 larceny in the house, 253.
 in manufactories, 254.
 in ships, wharfs, etc., *ib.*
 larceny or embezzlement by clerks or servants, 256.
 by persons in the public service, 261.
 in the post office, 262.
 three distinct acts of embezzlement may be charged, *ib.*
 indictment, 263.
 no acquittal if offence turn out to be larceny, and *vice versa*, 264.
 embezzlement by officers of Bank of England, 264.
 larceny by tenants or lodgers, 264.
 frauds by agents, bankers, or factors, 265.
 cheats at common law, 269.
 other frauds provided against by statute, 273.
 obtaining money, etc., by false pretences, 274.
 receiving stolen goods, 279.
 obtained by false pretences, 281, 283.
 embezzled goods, 281.
 proof of guilty knowledge, *ib.*
 presumption from recent possession, *ib.*
 indictments for the substantive felony, *ib.*
 indictment for stealing and receiving, 282.
 joinder of counts, *ib.*
 separate receivers in same indictment, *ib.*
 separate convictions on joint indictment, *ib.*
 where principal guilty of a misdemeanour, 281, 283.
 receiver where triable, 283.
 venue, etc., *ib.*
 possession, 283, 296.
 receivers where original offence is punishable by summary conviction, 284.
 accessories, aiders, and abettors, *ib.*
 restitution of stolen property, *ib.*
 under the Larceny Act, *ib.*
 by common law, 285.

LARCENY—*continued.*

- II. LARCENY, ETC., BY STATUTE—*continued.*
 by statute, 286.
 taking rewards, 287.
 apprehension of offenders, etc., *ib.*
 summary proceedings, etc., 288.
 summons to appear, *ib.*
 application of penalties, 289.
 committal on non-payment of the penalty, *ib.*
 discharge of offender in certain cases, *ib.*
 bar to other proceedings, *ib.*
 appeal, *ib.*
 no *certiorari*, 290.
 convictions returned to quarter sessions, *ib.*
 summary jurisdiction in cases of larceny under the 18 & 19 Vict. c. 126, 291.
 venue in proceedings against persons acting under the 24 & 25 Vict. c. 96, 294.
 notice of action, *ib.*
 general issue to be pleaded, *ib.*
 as to other matters, 295.
 stealers triable where they have the property, 295.
 at common law, *ib.*
 out of the kingdom, *ib.*
 on boundaries of counties, *ib.*
 during a journey, *ib.*
 detached parts of counties, *ib.*
 counties of cities and towns, 296.
 possession, 283, 296.
 admiralty jurisdiction, 296.
 form of indictment for a subsequent offence, *ib.*
 proof of the previous conviction, 296, 297.
 arraignment of defendant upon subsequent offence, 296, 297.
 upon previous conviction, 297.
 any number of previous convictions may be laid, *ib.*
 proof of identity, *ib.*
 fines and sureties for keeping the peace, *ib.*
 hard labour, 298.
 penal servitude in lieu of transportation, *ib.*
 solitary confinement and whipping, *ib.*
 summary proceedings under the 11 & 12 Vict. c. 43, *ib.*
 costs of prosecution in misdemeanours against the Act, *ib.*
 costs in general, *ib.*
 extent of Act, 299.
 commencement of Act, *ib.*
 indictment for larceny, *ib.* See also INDICTMENT.
 venue, *ib.*
 goods must be described, *ib.*
 several goods mixed, 300.
 number, *ib.*
 election, *ib.*
 value, 301.
 property how stated, *ib.*
 in whom laid, *ib.*
 where only bare charge, 302.

LARCENY—*continued.*

- II. LARCENY, ETC., BY STATUTE—*continued.*
 joint ownership and survivorship, 302.
 bodies not incorporated, *ib.*
 joint stock companies, parish officers, etc., *ib.*
 church property, 303.
 stealing a shroud or corpse, *ib.*
 property of dead persons, *ib.*
 where the owner is unknown, *ib.*
 corporations, partnerships, companies, etc., 304.
 the taking, etc., *ib.*
forms, ib.

LEAD.

- stealing of, from buildings, 240.
 damaging mines of, 781.

LEASE. See LANDLORD AND TENANT.

LEET.

- meaning of the word, 324.
 leet, what, 325.
 derived from the torn, *ib.*
 frankpledge, *ib.*
 who to attend at, *ib.*
 when to be holden, *ib.*
 adjournment of 326.
 offences within, not inquirable in the torn, *ib.*
 steward may commit for an affray, *ib.*
 what felonies cognizable in, *ib.*
 other public offences, *ib.*
 private offences, *ib.*
 within what time offences are cognizable, *ib.*
 choice of constables, etc., *ib.*
 jurors, 327.
 power of, to examine weights, etc., *ib.*
 custom to present persons to be admitted as burgesses, *ib.*
 indictments to be indented, *ib.*
 how to be certified, *ib.*
 traverse in, *ib.*
 fine by, *ib.*
 amercement by, *ib.*
 bye-law, 328.
 pillory, *ib.*
 stocks, *ib.*
 mis-user or non-user, *ib.*
 mandamus to hold, *ib.*
 inspection, *ib.*
 business devolved on the sessions, *ib.*

LETTERS.

- sedition or defamatory. See LIBEL.
 threatening, 254, 790.
 stealing of, and opening or detaining. See POST OFFICE.

LEVEL. See MINE.

LIBEL.

- what a libel, in general, 328.
 indictment for, when it lies, 329.

LIBEL—*continued.*

- manner in which libel is expressed, 329.
 how far truth of a publication a justification or extenuation, *ib.*
 sending a provoking letter or challenge, 330.
- I. *Libels affecting Individuals.*
 what a libel in general, 331.
 criticism on books, etc., *ib.*
 malice, *ib.*
 confidential communications, 332.
 proceedings in Courts of justice, *ib.*
 in houses of parliament, *ib.*
 proceedings of court-martial, 334.
 courts of justice, *ib.*
 in the proceedings themselves, *ib.*
 proceedings before justices, coroners, etc., *ib.*
 discussion at public meeting, 335.
- II. *Libels affecting the Public, Public Officers, etc., and Bodies of Persons.*
 blasphemy, 335.
 oral or written, *ib.*
 libels against religion, 335.
 against morality, 336.
 against the Queen, *ib.*
 against the constitution, *ib.*
 against the government, *ib.*
 government is no more than public order, which is morality, *ib.*
 against foreign governments, 337.
 against judges, juries, etc., justice, etc., *ib.*
 against persons in public capacities, *ib.*
 on bodies of men, and several persons, *ib.*
 against deceased persons, *ib.*
- III. *Who are liable for Libel, and herein as to what is a Publication.*
 composer, procurer, and publisher, 338.
 copying a libel, *ib.*
 sending MSS. to a publisher, *ib.*
 writing a libel dictated by another, *ib.*
 showing it to another, *ib.*
 sending a letter by defendant, *ib.*
 delivering a sealed letter, *ib.*
 letter by post, *ib.*
 innocently delivering a libel, *ib.*
 innocently reading one, 339.
 having in possession, *ib.*
 libel stolen, *ib.*
 finding a libel on a bookseller's shelf, *ib.*
 acts of servants, *ib.*
 publication by servant, etc., master may show it was without his consent, and without negligence on his part, *ib.*
 newspaper proprietor, *ib.*
 several publications, *ib.*
 sending a challenge or provoking letter, *ib.*
- IV. *The Prosecution of Libellers.*
 (1.) *The Power of Justices to apprehend them.*
 in general, 340.
 recognizance on a seditious libel, *ib.*

LIBEL—*continued.*

- IV. *The Prosecution of Libellers—continued.*
- (2.) *Criminal Information for.*
 where libel affects the public, 341.
 where it affects individuals, *ib.*
- (3.) *Indictment for.*
 when it lies, 342.
 venue in, *ib.*
 inducement, *ib.*
 intent, 343.
 publication, *ib.*
 concerning whom or what, *ib.*
 the libel itself, *ib.*
 innuendoes, 344.
- (4.) *Plea to.*
 truth of libel pleadable, 345.
 proviso as to plea of not guilty in civil and criminal proceedings, *ib.*
 effect of failure in proof of all the imputations, *ib.*
- (5.) *Evidence to support the Prosecution.*
 defendant's right to have whole publication read, 345.
 introductory statements, 346.
 where libel itself is evidence, *ib.*
 official situation, *ib.*
 malice, *ib.*
 publication, 347.
 in newspapers, *ib.*
 evidence to rebut *prima facie* case of publication by an agent, *ib.*
 proof of similar libel having passed unnoticed, *ib.*
- (6.) *The Trial.*
 power of a jury in cases of libel, 347.
 the 32 Geo. 3, c. 60, *ib.*
- (7.) *Costs on Prosecution.*
 defendant entitled to, on acquittal of a private libel, 348.
- (8.) *Punishment for Libel, Seizure of Copies, etc.*
 the punishment, 348.
 penalties against blasphemy, *ib.*
 limitations of prosecutions for blasphemy, *ib.*
 relief from penalties, 349.
 offence of blasphemy at common law, *ib.*
 not triable at sessions, 350.
 false defamatory libel punishable by imprisonment and fine, *ib.*
 malicious defamatory libel, by imprisonment or fine, *ib.*
 mitigation of, *ib.*
 the 60 Geo. 3 & 1 Geo. 4, c. 8, *ib.*
 seditious and blasphemous libels, *ib.*
 Court to make order for seizure of copies of libels in possession of persons against whom verdicts shall have been had, etc., *ib.*
 copies of libels so seized to be restored if judgment for defendant; otherwise, to be disposed of as Court shall direct, 351.
 second conviction, *ib.*

LIBEL—*continued.*

- IV. *The Prosecution of Libellers—continued.*
 certificate to be given of conviction of former libel, 351.
 limitation of actions, *ib.*
 venue in, *ib.*
 general issue may be pleaded, *ib.*
 double costs, *ib.*
 newspapers, 352.
- V. *Publishing or threatening to publish, etc., a Libel to extort Money, 352.*
- VI. *Forms as to.*
 warrant to apprehend for a libel, 352.
 commitment for a blasphemous libel, *ib.*
 commitment for a seditious libel, *ib.*
 commitment for seditious words, 353.
 indictment for a blasphemous libel, *ib.*
 indictment for a seditious libel, *ib.*
 indictment for seditious words, *ib.*
 indictment for obscene libels, 354.
 commitment for a libel on an individual, *ib.*
 indictment for writing and sending a libellous letter to prosecutor, *ib.*
 count for a libel by a picture, 355.

LIBRARIES, PUBLIC.

- the 18 & 19 Vict. c. 70, 355.
 repeal of former statute, 356.
 short title of Act, *ib.*
 interpretation clause, *ib.*
 adoption of Act by boroughs, *ib.*
 meeting to be called in boroughs, 357.
 parishes adjoining borough may unite, *ib.*
 majority necessary, *ib.*
 amount of population, *ib.*
 expenses paid out of borough fund, *ib.*
 part of sect. 5 of former Act repealed, *ib.*
 board of any district within limits of any improvement Act may adopt the Act, 358.
 expenses of Act charged upon the improvement rate, *ib.*
 adoption by certain parish with consent of two-thirds of the ratepayers, *ib.*
 vestry to appoint commissioners, *ib.*
 commissioners going out of office, 359.
 general and special meetings of commissioners, *ib.*
 minutes of proceedings, *ib.*
 distinct accounts, *ib.*
 expenses of Act in any parish to be paid out of poor-rate, *ib.*
 vestries of neighbouring parishes may adopt the Act, 360.
 rates not to exceed one penny in the pound, *ib.*
 accounts to be open to inspection, *ib.*
 "Towns Improvement Clauses Act" not to apply to boroughs, *ib.*
 new library or museum in connection with old, *ib.*
 power to borrow on mortgage, *ib.*

LIBRARIES, PUBLIC—*continued.*

- provisions of 8 & 9 Vict. c. 16, as to borrowing extended, 361.
- lands taken, etc., for purposes of this Act, *ib.*
- provisions of 8 & 9 Vict. c. 18, incorporated, *ib.*
- lands sold or exchanged, *ib.*
- general management, in whom vested, *ib.*
- property in whom vested, *ib.*
- only one meeting in the year, 362.
- adoption of the Act in the city of London, *ib.*
- museums to be free, *ib.*
- extent of Act, *ib.*

LIGHT-HOUSE.

- removing a light, etc., 790. See MALICIOUS INJURIES TO PROPERTY.

LIGHTING AND WATCHING OF PARISHES, etc.

I. *The Duty, etc., of Watching at Common Law.*

- watch and ward, 363.
- by individuals in general, *ib.*
- by constable, *ib.*
- by justices, *ib.*
- persons taken by watchmen, *ib.*
- indemnity of watchmen, *ib.*
- punishment for not watching, 364.

II. *As regulated by Statute.*

- in municipal corporations, 364.
- in parishes in general, *ib.*
- repeal of 11 Geo. 4, c. 27, *ib.*
- inspectors under former Act to continue to act until others appointed, *ib.*
- Act applicable to all parishes in England and Wales, *ib.*
- on application of three rated inhabitants, churchwardens to convene a meeting in vestry to determine whether provisions of Act shall be adopted, *ib.*
- chairman to be elected, who shall determine any controversies, 365.
- chairman to read requisition, and require persons to determine whether Act shall be adopted, *ib.*
- if meeting determine to adopt Act, provisions thereof shall thenceforth take effect, *ib.*
- inhabitants to fix amount of money to be raised yearly, *ib.*
- sum, how to be raised, 366.
- poll may be demanded as to adoption of Act, *ib.*
- demand of poll to be delivered to churchwardens, *ib.*
- notice of poll to be given by churchwardens, and affixed on door of church, etc., *ib.*
- form of notice, *ib.*
- form of declaration, *ib.*

LIGHTING AND WATCHING, etc.—*cont.*II. *As Regulated by Statute—continued.*

- churchwardens to examine votes, and declare whether two-thirds of them are in favour of adopting Act, 366.
- whole number of voters to be majority of ratepayers of parish, 367.
- expenses incurred by churchwardens to be paid out of poor-rates, *ib.*
- ratepayers may inspect votes, *ib.*
- no person to vote unless he has been rated one year, *ib.*
- notice of adoption of Act to be affixed on church door, *ib.*
- Act may be abandoned, *ib.*
- if meeting determine against adopting this Act, no other meeting to be convened in less than one year, 368.
- mode of electing inspectors, *ib.*
- qualification of inspectors, *ib.*
- mode of proceeding if poll demanded, *ib.*
- poll when to close, *ib.*
- inspectors may be appointed at first meeting, 369.
- at end of twelve months inspectors to give notice to churchwardens that they are ready to produce accounts, and churchwardens to call a meeting for that purpose, *ib.*
- meetings in future years, *ib.*
- inspectors at such meeting to produce accounts, *ib.*
- one-third of them to go out of office, and others elected, *ib.*
- outgoing inspector eligible to be re-elected, *ib.*
- chairman to decide questions as to eligibility, etc., *ib.*
- how vacancies in number of inspectors shall be filled up, *ib.*
- inspectors to meet monthly, 370.
- rated inhabitants may prefer complaints, *ib.*
- special meetings of inspectors, *ib.*
- inspectors to appoint officers during pleasure, and rent an office for transaction of their business, *ib.*
- no person to hold two offices, etc., at same time, *ib.*
- security to be taken from treasurer, *ib.*
- if security not given, etc., appointment void, *ib.*
- treasurer and officers to account, 371.
- proceedings against officers neglecting to account, *ib.*
- complaint may be made to justices, *ib.*
- money may be levied by distress, *ib.*
- if no goods, etc., offender may be committed to gaol, etc., *ib.*
- inspector may compound, *ib.*
- not to be imprisoned for longer than three months, 372.
- commitment of offender not to discharge his sureties, *ib.*

LIGHTING AND WATCHING, etc.—*cont.*II. *As Regulated by Statute—continued.*

officers taking any fee or reward besides salary, etc., appointed, to forfeit £50, 372.

no inspector to hold office of trust under this Act, *ib.*

inspectors may sue and be sued in name of any one of them, *ib.*

action, when not to abate, etc., *ib.*

inspector to be a competent witness, *ib.*

inspector to be reimbursed for all costs, *ib.*

inspector, when not personally answerable, 373.

proceedings at meetings of inspectors to be entered in books, which shall be good evidence, *ib.*

accounts to be kept, *ib.*

and open to inspection of ratepayers, who may take copies, etc., *ib.*

inspectors to issue an order to overseers for payment of money for purposes of Act, *ib.*

power to collect rates, *ib.*

owners, etc., of houses and land, in what proportion to be rated, 374.

land and houses to be rated separately, *ib.*

land, etc., not to be assessed higher than in last poor-rate, *ib.*

succeeding overseers to collect rate if same not levied, *ib.*

and to have same powers, etc., as their predecessors, *ib.*

overseers to pay amount to treasurer within three months from delivery of order, *ib.*

receipt of treasurer to be a discharge to overseers, 375.

where other persons are authorized to collect poor rates, such persons to be deemed overseers, *ib.*

overseers may be distrained upon for nonpayment, *ib.*

if goods be not sufficient, etc., arrears to be added to amount of next levy, *ib.*

watchmen, etc., to be appointed, and provided with arms, clothing, etc., *ib.*

inspectors may defray expenses of prosecuting felons, etc., 376.

expenses, etc., to be paid out of moneys received under Act, *ib.*

watchmen, etc., to deliver up clothing on removal, etc., *ib.*

penalty, *ib.*

duty of watchmen, etc., to prevent robberies, etc., *ib.*

to apprehend felons, etc., *ib.*

may require persons to aid and assist them, *ib.*

penalty for assaulting, etc., watchmen, *ib.*

watchmen, etc., to be sworn in, and to have the power of constables, 377.

not to gain a settlement thereby, *ib.*

LIGHTING AND WATCHING, etc.—*cont.*II. *As Regulated by Statute—continued.*

certain fees to be paid over to inspectors, 377.

fire engines to be provided, *ib.*

lamp irons to be put up, *ib.*

lamps to be lighted with gas, etc., *ib.*

gas pipes not to be laid on private premises without consent, *ib.*

owners of private grounds may alter position of pipes, 378.

for stopping escape of gas, *ib.*

penalty for neglect, *ib.*

power to convey away washings of gas works, *ib.*

penalty for conveying washings into any river, etc., 379.

gas pipes to be laid four feet from water pipes, and in a particular manner, 380.

to prevent escape of gas and contamination of water, *ib.*

for ascertaining if water contaminated, 381.

persons supplying gas liable to be indicted for a nuisance, 382.

penalty for wilfully destroying or injuring lamps, 382.

not exceeding 40s. for every lamp, etc., *ib.*

how recoverable, *ib.*

how persons accidentally breaking lamps are to be dealt with, *ib.*

power for inspectors to contract for works directed to be done by Act, 383.

inspectors may sue for breach of contract, *ib.*

or may compound with contractor, *ib.*

or contract may be cancelled, *ib.*

inspectors may purchase or rent ground or buildings for purposes of Act, *ib.*

property of lamps, etc., vested in the inspectors, 384.

actions, etc., to be brought in name of inspectors, *ib.*

inspectors of adjoining parishes may unite, *ib.*

forms of information and conviction, *ib.*

form of information, *ib.*

form of conviction, *ib.*

recovery and application of penalties, 385.

penalties, how applied, *ib.*

offender may be detained till return made to warrant of distress, *ib.*

if not sufficient distress, etc., *ib.*

offender may be sent to common gaol, etc., for not exceeding six months, *ib.*

inspectors exempted from personal liability, *ib.*

inhabitants may be witnesses, *ib.*

appeal to quarter sessions against order of inspectors, etc., *ib.*

within four calendar months after cause of complaint, etc., 386.

fourteen days' notice in writing to be given to inspectors, etc., *ib.*

LIGHTING AND WATCHING, etc.—*cont.*II. *As Regulated by Statute—continued.*

and recognizance to be entered into, 386.
 appeals against rate to be subject to same rules as appeals against poor-rates, *ib.*
 plaintiff not to recover in action after tender of amends, *ib.*
 limitation of actions, etc., *ib.*
 notice of, *ib.*
 tender of amends, *ib.*
 venue and general issue, 387.
 double costs, *ib.*
 proceedings not to be unlawful for want of form, *certiorari*, *ib.*
 parishes may adopt only parts of Act, *ib.*
 limiting the powers of the Act, *ib.*
 parts of parishes may adopt provisions of Act, *ib.*
 but not to interfere with any local Act, 388.
 surveyor of commissioners of sewers may enter into gasworks, to see if there be escape of gas, etc., *ib.*
 not to prejudice rights of commissioners of sewers, *ib.*
 nor to affect universities, *ib.*
 construction of Act, *ib.*

III. *The "Gasworks Clauses Act."*

extent of Act, 389.
 interpretation clauses, *ib.*
 short title, 390.
 form in which portions of this Act may be incorporated in other Acts, *ib.*
 power to break up streets, etc., and to open drains, 391.
 private lands, *ib.*
 notice to persons having control of streets, etc., *ib.*
 superintendence of persons having control, *ib.*
 work to be performed without such superintendence in certain cases, *ib.*
 streets to be reinstated, 392.
 penalty for delay in reinstating, *ib.*
 in case of delay other parties may reinstate and recover expenses, *ib.*
 power to contract for lighting streets, *ib.*
 power to let meters, 393.
 meters not liable to distraint, etc., *ib.*
 undertakers may enter to ascertain quantity of gas consumed, *ib.*
 recovery of rents for gas, *ib.*
 power to take away pipes, etc., *ib.*
 penalty for fraudulently using gas, *ib.*
 for wilfully damaging pipes, 394.
 accidentally damaging pipes, *ib.*
 penalty for causing water to be corrupted, *ib.*
 when and where to be sued for, *ib.*
 daily penalty during continuance of fouling water, *ib.*
 during escape of gas after notice, *ib.*
 penalty of water contaminated by gas, *ib.*
 power to examine gas pipes, 395.

LIGHTING AND WATCHING, etc.—*cont.*III. *"The Gasworks Clauses Act"—cont.*

expenses to abide result of examination, 395.
 how to be ascertained, *ib.*
 nothing to exempt undertakers from an indictment for a nuisance, *ib.*
 profits of the company limited, *ib.*
 excess to form a reserve fund, *ib.*
 this fund only resorted to for extraordinary claims, 396.
 where fund amounts to one-tenth of nominal capital, interest how to be applied, *ib.*
 sum taken from fund to supply deficiency in profits, *ib.*
 if profits more than amount prescribed, a rateable reduction to be made in the price of gas, *ib.*
 costs of groundless petition, *ib.*
 penalty for refusing to produce books, *ib.*
 annual account to be made up and be open to inspection, 397.
 tender of amends, *ib.*
 "Railway Clauses Consolidation Act, 1845," as to damages, etc., incorporated, *ib.*
 Ireland, payment of penalties to guardians, *ib.*
 acts done by one justice, 398.
 penalties for offences within the metropolitan district, *ib.*
 perjury, *ib.*
 copies of special Act to be kept in office, etc., and be open to inspection, *ib.*
 penalty for not doing so, *ib.*
 undertakers not exempt from the provisions of the 57 Geo. 3, c. 29, or from the laws regulating sewers, *ib.*
 saving of rights of the crown, 399.
 undertakers not exempt from any future general Act, *ib.*

IV. *The Act for the Regulation of Gas Meters.*
 interpretation of words "meter" and "person," 399.

fixing unit of measure, *ib.*
 models of measures to be made and verified, *ib.*
 models to be deposited, 400.
 copies of models to be provided, *ib.*
 appointment of inspectors, *ib.*
 models and copies to be provided by town councils, etc., 401.
 officers of exchequer to stamp copies of models, *ib.*
 expenses of copies, models, inspectors, etc., paid out of county rates, etc., *ib.*
 certain persons not to be inspectors, 402.
 inspector to enter into recognizances, *ib.*
 inspectors to attend at towns where gas is consumed when required by justices, *ib.*
 inspector to pay fees to treasurer of county, etc., *ib.*

LIGHTING AND WATCHING, etc.—*cont.*IV. *The Act for the Regulation, etc.—cont.*

- meters need not be restamped, 402.
- penalty on inspector for misconduct, *ib.*
- incorrect meters, when to be stamped and when not, 403.
- incorrect meters used by agreement, *ib.*
- rules for testing meters, *ib.*
- penalty for counterfeiting stamps, *ib.*
- penalty for tampering with a meter, 404.
- or for obstructing inspector, *ib.*
- consumers may use any stamped meter, *ib.*
- after ten years all meters to be stamped, *ib.*
- penalty for using unstamped meter, *ib.*
- no meter to be fixed for use unless stamped, *ib.*
- unstamped meters stamped or stamped meters substituted at expense of person requiring it, *ib.*
- fees for testing and stamping, 405.
- power to justices and inspectors to enter, etc., and inspect gas meters, *ib.*
- disputed decision of inspector referred to two inspectors, etc., *ib.*
- appeal to quarter sessions, *ib.*
- this Act and existing powers not cumulative, 406.
- proceedings not quashed for want of form, *no certiorari, ib.*
- recovery and application of penalties, 407.
- appeal in Scotland, *ib.*
- limitations of actions, etc., *ib.*
- tender of amends, *ib.*

V. *Forms, 408.*

- warrant for keeping of watch, *ib.*
- committal of person apprehended, *ib.*
- indictment for not watching, *ib.*
- application by ratepayers to churchwardens, *ib.*
- notification of time and place of meeting of ratepayers, 409.
- book or paper to be used at the meeting for determining whether the 3 & 4 Will. 4, c. 90, shall come into operation, *ib.*
- the same on election of inspectors, *ib.*
- minute of adoption of Act, *ib.*
- minute stating the amount of money to be raised, 410.
- demand of poll, *ib.*
- notice of adoption of Act, *ib.*
- notice for election of inspectors, 411.
- certificate of chairman to overseers of the election of inspectors, *ib.*
- notice by inspectors of being ready to produce accounts, *ib.*
- notice to be given by churchwardens on receipt of notice for inspectors, *ib.*
- notice of vacancy in number of inspectors, *ib.*
- notice to treasurer, etc., to deliver up books, etc., 412.
- order on overseers to collect money, *ib.*

LIGHTING AND WATCHING, etc.—*cont.*V. *Forms—continued.*

- note to be given by overseers to treasurer, 412.
- receipt to be given by treasurer to overseers, *ib.*
- notice of appeal, 413.

LOCAL GOVERNMENT.

- enumeration of principal statutes, 413.
- division of the subject, *ib.*

I. *The Public Health Acts.*

- (1.) *Application of the Acts and Interpretation of Terms, 416.*
 - extent of Act 11 & 12 Vict. c. 63, *ib.*
 - interpretation clause, *ib.*
 - meaning of words "corporate borough," "burgesses," "year," "borough," under other statutes, 418.
 - limits of the 21 & 22 Vict. c. 98, *ib.*
 - provisions of that Act and the 11 & 12 Vict. c. 63, to be construed together, 419.
 - period at which Act to take effect, *ib.*
 - not to affect qualification or powers of local boards, *ib.*
 - powers, etc., to be the same as under the 11 & 12 Vict. c. 63, etc., 419.
 - construction of terms, *ib.*
 - exercise of powers under Public Health Act, requiring sanction of general board of health, *ib.*
 - proceedings, contracts, etc., *ib.*
- (2.) *Adoption of the Act of 1848.*
 - upon petition or in case of excessive number of deaths, inspector to make local inquiry, 420.
 - inspector to give notice of inquiry and report to the board, *ib.*
 - board may cause inspector to make further inquiries respecting boundaries and report, etc., 421.
 - Act put in force by order of her Majesty in council, *ib.*
 - Act put in force by provisional order of general board and sanctioned by Parliament, 422.
 - exception, *ib.*
 - consent of town-council, etc., in certain cases, *ib.*
 - costs of preliminary inquiry, 423.
- (3.) *Constitution of the Local Board under the Act of 1848, 424.*
 - town council to be local board in districts of one borough, etc., *ib.*
 - selection, etc., of local boards, *ib.*
 - by town councils and part by owners and ratepayers, *ib.*
 - a meeting in pursuance of 5 & 6 Will. 4, c. 76, *ib.*
 - corporation may be sued on contracts, *ib.*
 - for negligently carrying out works, *ib.*
 - election of member of local board, 425.

LOCAL GOVERNMENT—*continued.*

- (3.) *Constitution of the Local Board under the Act of 1848—continued.*
 as to number of persons to be elected, 426.
 in case of vacancies, remaining members to act, *ib.*
 persons selected and elected to serve in respect of one title only, *ib.*
 members elected for part of a sewerage district to constitute separate board for other purposes of the Act, *ib.*
 qualification of elected members, *ib.*
 declaration to be made before acting, 427.
 false declaration a misdemeanour, *ib.*
 person neglecting to make declaration or to act for three months to cease to be a member, *ib.*
 disqualifications, *ib.*
 what is an interest in a contract, 428.
- (4.) *Adoption of the Act of 1858, 428.*
 Act, how to be adopted, *ib.*
 summoning meetings for that purpose, 429.
 notice of, *ib.*
 choosing of chairman, *ib.*
 rules as to resolutions, *ib.*
 penalty for forging voting-papers, *ib.*
 provisions as to a less place included in a greater, 430.
 partial adoption of Act, *ib.*
 adoption of Act by place not having a known or defined boundary, *ib.*
 Settling boundaries on petition, *ib.*
 rules as to petitions, *ib.*
 any place may adopt Act when boundary settled, 431.
 appeal against adoption of Act, *ib.*
 power to appeal by petition, *ib.*
 presented to secretary of State, *ib.*
 secretary to direct inquiry, *ib.*
 notice of inquiry, *ib.*
 order by secretary, *ib.*
 appeal to secretary, *ib.*
 time for appealing, 432.
 order of secretary conclusive as to validity of vote, *ib.*
 general provisions in relation to adoption, *ib.*
 notice of adoption to secretary of state, *ib.*
 provision as to time of taking effect of Act, *ib.*
 objections to adoption, 433.
 proof of adoption, *ib.*
 payment of costs, etc., incurred in adoption, *ib.*
 as to costs of proceedings when Act is not adopted, *ib.*
 every local authority may adopt any part of the Act, *ib.*
 election of such local authorities when elected for life at time of adoption, 434.
 restriction as to adoption of Act by certain places, *ib.*
 amendment of sects. 17 and 18 of the 21 & 22 Vict. c. 98, *ib.*

LOCAL GOVERNMENT—*continued.*

- (4.) *Adoption of the Act of 1858—continued.*
 as to abandonment of Act, 434.
 avoidance of constitution of district, 435.
 amendment of sect. 15 of 21 & 22 Vict. c. 98, *ib.*
- (5.) *Constitution of Local Boards under the Act of 1858.*
 local boards, how constituted, 435.
 district, how divided into wards, 436.
 as to casual vacancies, *ib.*
 as to first meeting of local board, *ib.*
 disqualification of members, *ib.*
 powers of local board to vest in town council when district becomes a corporate borough, 437.
 power to adjoining districts to unite, *ib.*
 power to local board to execute works in adjoining district, *ib.*
 local boards, sewer, and nuisance authorities to be bodies corporate, *ib.*
- (6.) *Election of the Local Board.*
 qualification of elector, *ib.*
 scale of voting, *ib.*
 "owner" and "owners," 438.
 elections, by whom conducted, 439.
 absence of chairman, *ib.*
 production of parochial books for purposes of election, *ib.*
 list of voters, *ib.*
 publication of notices before election, *ib.*
 nomination and election, *ib.*
 mode of voting, 440.
 collection of voting-papers, *ib.*
 examination of votes and elections of local boards, *ib.*
 notices to persons elected, 441.
 list of persons elected, how dealt with, *ib.*
 to be open to inspection, *ib.*
 penalty upon neglect to comply with provisions of the Act, *ib.*
 defects in election not to invalidate the proceedings, *ib.*
 expenses of election, how defrayed, *ib.*
 local board in Oxford and Cambridge, *ib.*
 execution of Act by commissioners under local Acts, 442.
 local board in district afterwards becoming a corporate borough, *ib.*
 failure to elect a local board, *ib.*
- (7.) *Meetings, etc., of Local Boards.*
 meetings of local boards of non-corporate districts and regulation of business, etc., 442.
 local boards to provide offices for transacting business, 443.
 committees may be appointed, *ib.*
- (8.) *Local Officers.*
 local boards to appoint surveyor, inspector of nuisances, clerk, treasurer, etc., *ib.*
 same person may be surveyor and inspector, 444.
 not clerk and treasurer, *ib.*

LOCAL GOVERNMENT—*continued.*

- (8.) *Local Officers—continued.*
 penalty on officers, etc., being interested in contracts or taking fees, 444.
 officers intrusted with money to give security and to account, *ib.*
 summary proceedings in case of failure to account, *ib.*
 power to appoint officer of health, 445.
- (9.) *District Maps.*
 map exhibiting system of sewage, *ib.*
 expense of surveys, etc., *ib.*
- (10.) *Sewers.*
 sewers, etc., vested in local board, 446.
 what is a sewer, *ib.*
 exception as to sewers made by any person for his own profit, etc., *ib.*
 power to purchase certain sewers, *ib.*
 making, alteration, and discontinuance of sewers, *ib.*
 cleaning and emptying sewers, 447.
 making reservoirs and deposit beds, *ib.*
 penalty for making unauthorized sewers and building over sewers and under streets, *ib.*
 use of sewers by persons beyond district, *ib.*
 power to make deduction from rate in respect of premises sufficiently drained, 448.
 disposing of sewage, *ib.*
 obtaining order for cleansing watercourses, or ditches near boundaries of district, *ib.*
 local board may exercise the powers of sect. 45 of 11 & 12 Vict. c. 63, without their district on making compensation, 449.
 notices before commencement of works, *ib.*
 objection by party interested, *ib.*
 inspector to inquire and report to secretary of state, *ib.*
 sum to be paid for draining of premises without the district, *ib.*
 sewer authority making default in providing sufficient sewers, etc., 450.
 recovery of expenses from defaulting authority, *ib.*
- (11.) *House Drains, etc.*
 no new house without drains, 450.
 local board to cause drains to be constructed, 451.
 sewers, wells, pumps, etc., in parishes with less than 2000 inhabitants, *ib.*
 penalty for erecting houses without water-closets, 452.
 local board to order them to be erected, *ib.*
 water-closets in factories, *ib.*
 local board to see that no nuisance is created, 453.
 earth-closets, *ib.*
- (12.) *Surface-Cleansing, etc.*
 local board to cause places for the deposit of dust, soil, etc., to be provided, 454.
 public water-closets, etc., *ib.*

LOCAL GOVERNMENT—*continued.*

- (12.) *Surface-Cleansing, etc.—continued.*
 ditches, drains, etc., to be cleansed or covered, 454.
 duty to cleanse conditional on owner neglecting, *ib.*
 penalties for keeping swine improperly, allowing water to remain in cellars, etc., 455.
 removal of filth on certificate of inspector of nuisances, *ib.*
 houses to be purified upon certificate of officer of health or two medical practitioners, *ib.*
 local board to cleanse or contract for cleansing, *ib.*
 penalty upon person obstructing, etc., local board, 456.
 local board to make bye-laws as to nuisances, *ib.*
 recovery of expenses of removal of offensive accumulations, *ib.*
 amendment of sect. 54 of 11 & 12 Vict. c. 63, *ib.*
 not necessary for surveyor to close ground before works are begun, *ib.*
 sects. 53 and 72 of 11 & 12 Vict. c. 63, as to new streets and houses repealed, 457.
 local board may make bye-laws with respect to level, width, and construction of streets, structure of walls, space about buildings, drainage, water-closets, etc., *ib.*
 decisions upon the above bye-laws, *ib.*
- (13.) *Slaughter-houses, etc.*
 local board may provide slaughter-houses and make bye-laws, 458.
 inspector of nuisances may enter places for the sale of butchers' meat, *ib.*
 new offensive trades to be subject to regulation by local board, *ib.*
 brickmaking not offensive, 459.
 newly establishing a business, *ib.*
 Act not to affect present law as to nuisances, *ib.*
- (14.) *Common Lodging-houses.*
 to be registered, 459.
 penalty on neglect, 460.
 cellars newly built not to be let as dwellings, *ib.*
 no cellars to be let except under certain conditions, *ib.*
 Act not to apply until a certain time to cellars already occupied, *ib.*
 churchwardens to give notice of the Act, 461.
- (15.) *Management of Streets.*
 vested in local board, 461.
 discretionary power to repair fences, etc., *ib.*
 power to compel paving, etc., of private streets, *ib.*
 decisions upon the above section, 462.

LOCAL GOVERNMENT—*continued.*

- (15.) *Management of Streets—continued.*
 certain streets to be deemed highways, and repaired by local board, 462.
 power to require gas and water pipes to be moved, 463.
 local board may purchase premises to improve streets, *ib.*
 meaning of term "highway," 463, 464.
 local board to provide for sewerage of parts of street not highways, 464.
 incumbent, etc., not liable to expenses, *ib.*
 local boards may agree as to making of new public roads, *ib.*
 local boards to construct public bridges, etc., 465.
 to agree with turnpike trustees as to repair, etc., of roads, *ib.*
 objections to be made by the sole proprietor of street, or by a majority of proprietors, *ib.*
 certain roads not to be interfered with, 466.
 except upon certain conditions, *ib.*
 plans, etc., to be deposited before giving notice for paving streets not highways, *ib.*
 form of notice, 467.
- (16.) *Regulation of Buildings.*
 when houses taken down, local board may prescribe line in which same shall be rebuilt, 467.
 local board may purchase premises for purpose of making new streets, 468.
 no house, etc., forming part of street to be brought forward without consent of local board, *ib.*
 when houses form part of a street, *ib.*
- (17.) *Public Walks.*
 places of public recreation, 468.
- (18.) *Supply of Water.*
 supplies of water and waterworks, 468.
 water kept constantly under pressure, 469.
 local board to construct works, etc., if company within the district will supply water, *ib.*
 local board may require houses to be supplied with water, etc., *ib.*
 water for public baths, trading, or manufacturing, *ib.*
 construction, etc., of public cisterns, 470.
 penalty for injuring waterworks, diverting streams, or wasting water, *ib.*
 for causing water in reservoirs to be fouled, *ib.*
 penalty on proprietors of gasworks, 470, 471.
 powers of sect. 76 of 11 & 12 Vict. c. 63 extended, 471.
 power of carrying water mains, *ib.*
 directors of waterworks or market company to sell works, etc., to local boards, 472.
 local boards may agree for terms of water supply, *ib.*
 recovery of expenses of water supply, *ib.*

LOCAL GOVERNMENT—*continued.*

- (19.) *Lighting.*
 local board may contract for lighting, 472.
- (20.) *Reception Houses for the Dead.*
 local board may provide premises for corpses before interment, 472.
- (21.) *Burial Grounds, etc.*
 dangerous to health may be prohibited, 472.
 interments within new churches or burial grounds, 473.
 local board to be burial board of district, *ib.*
 local boards to repair fences of burial grounds, 474.
 burial boards may transfer their powers to local boards, *ib.*
- (22.) *Purchase, etc., of Lands.*
 local boards may purchase lands, etc., under the 8 & 9 Vict. c. 18, 474.
 regulation as to purchase, 475.
 publication of notices, *ib.*
 service of notices, *ib.*
 local board to petition secretary of state, *ib.*
 who may direct inquiry, *ib.*
 and make provisional order, 476.
 which will be invalid until confirmed by Parliament, *ib.*
 costs, how to be defrayed, *ib.*
 interpretation of "special Act," *ib.*
 powers of local boards as to lands purchased under the "Local Government Act, 1858," *ib.*
 extent of authority to make provisional orders, *ib.*
- (23.) *Contracts.*
 contracts by local board, 477.
 composition for penalties in respect of breach of contracts, *ib.*
 estimates to be made before commencing works, *ib.*
 as to contracts above £100, *ib.*
 decisions upon the section, 477, 478.
- (24.) *Rates.*
 district fund account to be kept, 478.
 general district rate, *ib.*
 prospective or retrospective, *ib.*
 assessment to district rates in case of unoccupied premises, 479.
 apportionment of rates between outgoing and incoming tenant, *ib.*
 parts of district may be separately assessed, *ib.*
 decisions upon the above, 479, 480.
 private improvement rates, 480.
 proportion of private improvement rate may be deducted from rent, 481.
 redemption of special district and private improvement rates, *ib.*
 water rate, *ib.*
 agreements with universities, *ib.*
 water rate payable in advance, *ib.*

LOCAL GOVERNMENT—*continued.*(24.) *Rates—continued.*

- power to stop water in case of non-payment of rates, 481.
- power to reduce or remit rates on account of poverty, 482.
- existing agreements between landlord and tenant not affected, *ib.*
- estimate to be prepared before making rates, *ib.*
- notice of rate, *ib.*
- rates to be open to inspection, *ib.*
- description of owner, etc., *ib.*
- amendment of rates, *ib.*
- rates published as poor-rates, 483.
- justices may summon for non-payment, and in default distrain, *ib.*
- objection at the hearing of the summons, 484.
- no power to state a case, *ib.*
- form of distress warrant, *ib.*
- penalty upon constables refusing to levy, *ib.*
- quota of rates to be paid by universities, *ib.*
- evidence of rates, *ib.*
- repeal of sect. 86 of "Public Health Act, 1848," as to special rates, *ib.*
- debts and contracts before the Act enforced, *ib.*
- general district rate, how assessed, 485.
- compounding in case of small tenements, *ib.*
- certain property assessable at one-fourth, *ib.*
- exemptions from rating under local Acts, 485, 486.
- poor-rate books to be accessible for rating under Public Health Acts, 487.
- in case of no assessment, etc., valuation to be made, *ib.*
- special district rates levied as part of general district rates, *ib.*
- debts due on special district rate repaid on credit of general district rate, *ib.*
- recovery of charges for private improvements, *ib.*

(25.) *Mortgage of Rates.*

- commissioners of public works may make advances to local boards, 488.
- money borrowed at lower rate to pay off securities at higher, *ib.*
- to pay off former mortgages, *ib.*
- form of mortgage, *ib.*
- register of mortgages, *ib.*
- transfer of mortgages, 489.
- register of transfers, *ib.*
- receiver appointed in certain cases, *ib.*
- powers for appointment of receiver exercised upon failure to elect a local board, *ib.*
- power to raise money upon credit of rates, 490.
- rentcharge may be granted for advances made to meet first cost of private improvements, *ib.*

LOCAL GOVERNMENT—*continued.*(25.) *Mortgage of Rates—continued.*

- rentcharges to be registered, 491.
 - extension of borrowing powers in certain cases, *ib.*
 - extension of powers to cases where local boards incur expenses for permanent works, etc., *ib.*
- (26.) *Bye-Laws.*
- not to be in force till confirmed by secretary of state, 492.
 - notice of confirmation, etc., *ib.*
 - bye-laws to be printed, *ib.*
 - licensing, etc., horses, boats, etc., for hire, *ib.*
- (27.) *Powers, transferred, Highways, etc.*
- local board to be surveyor of highways, 493.
 - existing surveyor to recover rates in arrears, *ib.*
 - existing liabilities to make sewers, etc., not to be discharged, *ib.*

(Highway Repairs.)

- see also HIGHWAYS.
- cost defrayed out of general district rate, 494.
- power to levy rates, *ib.*
- certain acts not required to be done, *ib.*
- application of surplus, *ib.*
- parts of parishes or townships not included in districts, 495.
- local board to act instead of inhabitants in vestry of townships, *ib.* See HIGHWAYS.
- encroachments on highways, *ib.* See HIGHWAYS.

(28.) *Powers incorporated.*

- provisions of the "Towns Police Clauses Act" incorporated with the "Local Government Act, 1858," 496. See POLICE OF TOWNS.
- provisions of the "Towns Improvement Clauses Act" incorporated with the "Local Government Act, 1858," 496.
- "Watching and Lighting Act" superseded by the "Local Government Act, 1858," *ib.* See LIGHTING AND WATCHING.
- "Public Baths and Washhouses Act" to be executed by local board as commissioners, 497.
- Sections of "Public Health Act, 1848," as to slaughter-houses repealed, *ib.*
- local board to establish markets, *ib.*
- "Markets and Fairs Clauses Act" incorporated, *ib.* See MARKETS AND FAIRS.
- what is an establishment of a market, 498.
- service of notices and repayment of costs under "Towns Improvement Clauses Act" and "Public Health Act, 1848," *ib.*

LOCAL GOVERNMENT—*continued.*

- (28.) *Powers incorporated—continued.*
 local boards under the "Local Government Act, 1858" may adopt the "Public Baths and Washhouses Act," 498.
- (29.) *General Superintendence.*
 appeal as to recovery of expenses, 498.
 superintending inspectors may summon witnesses, call for plans, rates, etc., 499.
 provision in relation to exercise of powers under "Public Health Act," requiring sanction of general board of health, *ib.*
 local board to report, *ib.*
 sanction of secretary of state substituted for sanction of general board, *ib.*
- (30.) *Audit of Accounts.*
 audit of accounts, 500.
 with respect to districts not boroughs, *ib.*
 power of allowance, disallowance, and discharge, *ib.*
 disallowances removed by *certiorari*, *ib.*
 appeal against disallowances, 501.
 auditor may require production of books, *ib.*
 notice of audit, *ib.*
 report of auditor, *ib.*
 accounts of improvement commissioners to be subject to "Local Government Act" as to audit, 502.
 making up accounts for audit, *ib.*
- (31.) *Arbitration.*
 mode of referring, 502.
 when arbitration is the proper course, and when *mandamus*, 503.
 death, etc., of one of several arbitrators, *ib.*
 of single arbitrator, *ib.*
 as to non-extension of time, *ib.*
 appointment of umpire by the parties, *ib.*
 by quarter sessions, *ib.*
 appointment and duties of umpire, 504.
 time within which award must be made, *ib.*
 arbitrator may require production of documents, *ib.*
 costs of reference, *ib.*
 submission made a rule of court, *ib.*
 declaration to be made by arbitrator and umpire, *ib.*
 arbitration confined to cases under £20, *ib.*
- (32.) *Legal Proceedings.*
 recovery of damages, etc., 505.
 form of conviction, *ib.*
 mode of proceeding before justices, *ib.*
 distress, how to be levied, 506.
 not unlawful for want of form, *ib.*
 justices may act though members of board, *ib.*
 common informers not to sue without leave of attorney-general, *ib.*
 proceedings for penalties within six months, *ib.*
 application of penalties, *ib.*
 who is a "party grieved," 507.

LOCAL GOVERNMENT—*continued.*

- (32.) *Legal Proceedings—continued.*
 liability to penalty not to relieve from other liabilities, 507.
 appeal to quarter sessions, *ib.*
 "sum adjudged," *ib.*
 power of sessions upon appeal against rates, *ib.*
 no rate or proceeding to be quashed for want of form, etc., 508.
 conviction removed by *certiorari*, *ib.*
 proceedings in non-corporate districts, *ib.*
 actions, etc., in name of clerk, *ib.*
 mode of describing property of local board, *ib.*
 actions, etc., not to abate, *ib.*
 clerk to be reimbursed, *ib.*
 notice of action, *ib.*
 limitation of actions, 509.
 venue, *ib.*
 general issue, *ib.*
 tender of amends, *ib.*
 money paid into court, *ib.*
 persons acting in execution of Act not to be personally liable, *ib.*
 notices by local boards to be signed by clerk, 510.
 expenses due from owners to be a charge on premises, *ib.*
 apportionment of expenses binding upon the owner after the notice, *ib.*
 memorials in respect of private improvement charges, *ib.*
 penalty on injury to works, etc, 511. See also NUISANCE.
 penalties to be payable to district fund account, *ib.*
 demands below £20 may be recovered in county courts, *ib.*
- (33.) *Provisional Orders, etc.*
 petition for incorporation or separation, or for repeal, etc., of local Acts, *ib.*
 power of secretary of state on receipt of petition to issue order, etc., 512.
 consents how testified, *ib.*
 provision as to meetings of the ratepayers of any place or part, *ib.*
 secretary of state to obtain confirmation of order, *ib.*
 to provide for execution of Act, *ib.*
 inquiry directed by secretary of state, *ib.*
 orders of secretary of state to be binding, 513.
 repayment of costs by provisional orders, *ib.*
- (34.) *Miscellaneous.*
 publication of orders in council, etc., 513.
 reports of inspectors to be laid before Parliament, *ib.*
 entry upon lands for the purposes of this Act, *ib.*
 compensation in case of damage by local board, 514.
 owners to be allowed time for repayment of expenses, *ib.*

LOCAL GOVERNMENT—*continued.*(34.) *Miscellaneous—continued.*

- perjury, 514.
- penalty for obstructing officers, defacing boards, etc., 515.
- upon occupiers preventing execution of works, *ib.*
- occupiers to disclose owner's name, *ib.*
- consents of board of health and local board to be in writing, *ib.*
- service of notice upon local board, *ib.*
- upon owners and occupiers, *ib.*
- exemptions from stamp duty, 516.

Saving Clauses, 516.

- sect 145 of 11 & 12 Vict. c. 63 repealed, *ib.*
- nothing in the "Local Government Act, 1858," to authorize any local board to use, etc., any sluices, floodgates, sewers, etc., made, etc., under authority of commissioners of sewers, etc., *ib.*
- saving clause for proprietors of canals, etc., *ib.*
- works which interfere with improvement of rivers, canals, etc., referred to arbitration, 517.
- effect of arbitration, 518.
- transfer of powers, etc., *ib.*
- corporation, etc., to alter sewers, *ib.*
- preserving water rights of companies or individuals, *ib.*
- arbitration questions, 519.
- Oxford and Cambridge, *ib.*
- application of general Acts to local boards, 520.

II. *The Sewage Utilization Acts.*

- enumeration of Acts, 520.
- divisions of subject, 521.

(1.) *Application & Interpretation of Terms.*

- application of Acts, 521, 523.
- "sewer authority," 522, 523, 533.
- "local board," 522.
- schedule, *ib.*
- powers of Acts cumulative, 522, 523.
- Act construed with "Sewage Utilization Act, 1865," 523.
- "owner," *ib.*

(2.) *Power to form Committees.*

- sewer authority to form committee of its own members and others, 523.
- other provisions as to committees, 524.

(3.) *Special Drainage Districts.*

- formation of, 524.
- appeal against constitution of, *ib.*
- evidence of formation of, *ib.*
- repeal of part of sect. 2 of the "Sewage Utilization Act, 1865," as to parishes partly under the "Local Government Act," 525.
- where part of parish under the "Local Government Act" the other part constituted a special drainage district, *ib.*
- undefined inhabited place to apply to be constituted a special drainage district, *ib.*
- appeal against, *ib.*

LOCAL GOVERNMENT—*continued.*II. *The Sewage Utilization Acts—continued.*(4.) *Union of Districts.*

- joint sewerage district, 525.
- advertisement of intention to form united district, 526.
- joint sewerage board, *ib.*
- powers of, *ib.*
- expenses of, *ib.*

(5.) *Power to Construct Sewers, etc.*

- power of sewer authorities, 526.
- power of entry, 527.

(6.) *Use of Sewers.*

- power to drain into sewers of sewer authority, 527.
- use of sewers by persons beyond district, *ib.*

(7.) *Drainage of Houses.*

- power of sewer authority as to privies, etc., 528.
- as to sewerage, *ib.*
- earth-closets, *ib.*

(8.) *Supply of Water.*

- to district of sewer authority, 529.
- expenses of sewer authority in supplying, *ib.*
- wells, etc., vested in sewer authority, 530.

(9.) *Payment of Expenses.*

- payment of expenses, 530.
- separate rate for sewage in parishes, *ib.*
- penalty on non-payment of rates by overseers, *ib.*
- private improvement expenses, 531.

(10.) *Power to take Lands.*

- power to take lands, 531.

(11.) *Compensation.*

- compensation, 531.

(12.) *Power to Combine.*

- power of sewer authorities to combine, 531.

(13.) *Pollution of Streams.*

- sewer authority may take proceedings to prevent, 531.
- sewers not to drain into any stream, 532.

(14.) *Loans.*

- public works commissioners may lend money to sewer authority, 532.

(15.) *Disposal of Sewage.*

- sewer authority may contract for supply of sewage, 532.
- "improvement of land" under the "Land Improvement Act, 1864," *ib.*
- exercise of powers without district as to distribution of sewage, *ib.*
- purchase of land for distribution of sewage, *ib.*
- land appropriated to sewage purposes how dealt with, *ib.*
- sewer authority may contribute to works under contracts relating to supply of sewage, 533.

LOCAL GOVERNMENT—*continued.*II. *The Sewage Utilization Acts—continued.*(16.) *Hospitals.*

power to provide hospitals, 533.
temporary supply of medicines, etc., *ib.*

(17.) *Legal Proceedings.*

penalty for wilful damage of works, 533.
incorporation of sanitary authorities, 534.
appearance of local authorities in, *ib.*
where sewer authority has made default
in providing sufficient sewers, etc., *ib.*
recovery of expenses of water supply, *ib.*
recovery of penalties, 534, 535.
recovery of expenses by secretary of state,
534.

III. *Public Improvement Act.*

ratepayers may hold land, etc., for the
purpose of forming public walks, etc.,
536.
adoption of 23 & 24 Vict. c. 30 in any
borough or parish of 500 inhabitants,
ib.
As to public baths and washhouses, *ib.*
ratepayers, after notice given, to rate
parishes, *ib.*
corporate bodies may attend and vote, *ib.*
one half of cost of improvement to be
raised by private subscription, *ib.*
amount of rate, *ib.*

IV. *Forms.*

list of forms, 536.

LOCKS.

on canals, etc., destroying of, 782.

LODGERS.

larceny by, 264.

LODGING-HOUSES.

statutes relating to, 541.

I. *Acts for the Regulation of Lodging-houses.*

the "Common Lodging-houses Act, 1851,"
541.

interpretation clause, 542.

by whom to be executed, *ib.*

expenses of executing, *ib.*

"local authority," 543.

notice of Act to keepers of common lodg-
ing-houses, *ib.*

registers to be kept, *ib.*

lodgers not to be received until house is
registered, *ib.*

local authority to make regulations, *ib.*

local authority to impose penalties, 544.

keeper of common lodging-house to give
notice of fever, etc., *ib.*

inspection of, *ib.*

penalty for offences against Act, *ib.*

recovery of penalties, *ib.*

general powers of local authority, *ib.*

extent of Act, 545.

schedule, form of notice, *ib.*

LODGING-HOUSES—*continued.*I. *Regulation of Lodging-houses—continued.*
the "Common Lodging-houses Act, 1853,"
545.

to be read with former Act, *ib.*

all common lodging-houses to be regis-
tered before being used, and to be kept
only by registered keepers, *ib.*

local authority may refuse to register if
keepers do not produce certificate of
character, *ib.*

evidence of register, *ib.*

local authority may require additional
supply of water to common lodg-
ing-houses, 546.

removal of sick persons to hospitals, etc.,
ib.

ordering reports from keepers of houses
for beggars, etc., *ib.*

removal of causes of complaint certified
under Nuisances Removal, etc., Act, *ib.*
Oxford and Cambridge, *ib.*

offences against the Act, 547.

conviction for third offence to disqualify
persons from keeping a common lodg-
ing-house, *ib.*

justices at petty sessions may execute Act,
ib.

expenses of executing, *ib.*

II. *Acts for encouraging the Erection of
Dwelling-houses for the Poorer Classes.*
the "Labouring Classes Lodging-houses
Act," 547.

Act, where to be adopted, 548.

interpretation clause, *ib.*

council of borough may adopt Act, 549.

expenses in a borough, *ib.*

local board of health may adopt the Act,
ib.

board to postpone proceedings for election
of members, *ib.*

expenses of executing by local board, *ib.*

improvement board may adopt Act, 550.

board to postpone proceedings for election
of members, *ib.*

if majority not elected by ratepayers their
consent to be obtained, *ib.*

expenses of executing Act by improvement
commissioners, *ib.*

auditing accounts of improvement com-
missioners, 551.

on request of ten ratepayers, churchwar-
dens to convene meeting for adoption of
Act, *ib.*

resolution of adoption sent to secretary of
state, *ib.*

requisite majority of two-thirds, *ib.*

vestry to appoint commissioners to carry
out Act, *ib.*

resignation of commissioners, *ib.*

vacancies to be filled up by vestry, *ib.*

meetings of commissioners, *ib.*

special meetings of commissioners, 552.

quorum, *ib.*

LODGING-HOUSES—*continued.*II. *Erection of Dwelling-houses—continued.*

appointment, etc., of officers, 552.
 minutes of proceedings, *ib.*
 account kept and open to inspection, *ib.*
 penalty for refusing to allow inspection, *ib.*
 auditors appointed yearly to examine accounts and report, *ib.*
 expenses in parish to be paid out of poor-rate, *ib.*
 overseers to levy rate for expenses, 553.
 money, etc., arising from lodging-houses in the parish to go towards expenses, *ib.*
 vestry may concur in carrying Act into execution, *ib.*
 incorporation of commissioners, 554.
 acts of commissioners valid though informal, *ib.*
 borrowing powers of council, *ib.*
 public works loan commissioners may advance money, *ib.*
 provisions of "Companies Clauses Consolidation Act, 1845," incorporated, *ib.*
 provisions of "Lands Clauses Consolidation Act, 1845," incorporated, 555.
 council of boroughs may appropriate lands vested in the mayor, etc., or contract for purchase, *ib.*
 commissioners in parishes may appropriate parish lands, or contract for purchase, *ib.*
 councils and commissioners may erect lodging-houses, *ib.*
 may enter into contracts, *ib.*
 no contract above £100 without notice, *ib.*
 councils or commissioners may purchase existing lodging-houses, 556.
 water and gas companies may supply lodging-houses, *ib.*
 councillors and commissioners not personally liable, *ib.*
 appeal against orders of council and commissioners, *ib.*
 council, etc., to sell and exchange lands, *ib.*
 expensive lodging-houses sold, and proceeds how dealt with, 557.
 commissioners to cease to be a corporation when their duties have ceased, *ib.*
 management vested in council and parish commissioners, *ib.*
 "Labouring Classes Dwelling-houses Act, 1866," *ib.*
 incorporated with "Labouring Classes Lodging-houses Act, 1851," *ib.*
 application of the "Public Works and Harbours Act," 558.
 to whom loans may be made, *ib.*
 objects of loans, *ib.*
 rules and regulations, *ib.*
 currency of loans, 559.
 "Labouring Classes Dwelling-houses Act, 1867," *ib.*

LODGING-HOUSES—*continued.*II. *Erection of Dwelling-houses—continued.*

lands or dwellings for the purposes for which the advance is made, 559.
 incorporation of "Lands Clauses Consolidation Act, 1845," *ib.*
 incorporation of "Commissioners Clauses Act, 1847," 560.
 special powers of mortgagees, *ib.*
 powers to companies, *ib.*
 rules laid before Parliament, *ib.*
 extent of Act, *ib.*
 the "Labourers Dwellings Act, 1855," *ib.*
 constitution of company, *ib.*
 power to form company, *ib.*
 registration of articles, 561.
 certificate of incorporation, *ib.*
 incorporation of the "Companies Clauses Consolidation Act, 1845," *ib.*
 rights and obligations of company, *ib.*
 purpose of company, *ib.*
 regulations as to dwellings, *ib.*
 permissive rights of the company, *ib.*
 power to mortgage, 562.
 demises, *ib.*
 purchase of interests of lessees, *ib.*
 penalty on misappropriation of funds, *ib.*
 penalty in case dwellings are not sufficiently drained, etc., 563.
 penalty on obstructing inspector, *ib.*
 incorporation of "Lands Clauses Consolidation Act, 1845," as to purchase of lands by agreement, *ib.*
 recovery of penalties, *ib.*
 extent of Act, *ib.*
 schedule, *ib.*
 form of articles of association, *ib.*

III. *Acts for Improving Artisans' and Labourers' Dwellings.*

"Artisans' and Labourers' Dwellings Act, 1868," 563.
 application of Act, and definition of "local authority," "local rate," and "clerk of local authority," 564.
 interpretation clause, *ib.*
 appointment of officers of health, etc., *ib.*
 officer to report, 565.
 to deliver copies of report to clerk, who shall refer same to surveyor, etc., *ib.*
 local authority to cause copies of reports to be given to owner, who may object, and to prepare plan and specification of required work, *ib.*
 clerk of local authority to give notice to owner of plan, etc., of required works having been prepared, *ib.*
 appeal, *ib.*
 notice to be given where owner appeals on the ground that he is not responsible, 566.
 where local authority decide in favour of owner, reports of notices to be sent to parties liable, *ib.*
 where disease exists officer to inspect, *ib.*

LODGING-HOUSES—*continued.*

III. *Artisans' & Labourers' Dwellings—cont.*

- secretary of state may compel local authority to act, 566.
- owner to signify to clerk whether he is willing to execute works, 567.
- service on owner where name and residence known, *ib.*
- where not known, *ib.*
- notices to be signed by local authority, *ib.*
- local authority to require owner to execute works as in specification, *ib.*
- proceedings in case owners neglect, *ib.*
- where local authority execute the works, *ib.*
- total demolition, compensation by local authority, 568.
- determination of tenancies, *ib.*
- remedies of owner for breach of covenant, etc., not prejudiced, *ib.*
- owner, instead of effecting improvements, may pull down premises, *ib.*
- application to justices where one of two owners neglects to comply with order, *ib.*
- grant of annuity to owner on completion of works, 569.
- incidents of charge, *ib.*
- charges recoverable as rent-charges in lieu of tithes, *ib.*
- an order for an annuity evidence of compliance, *ib.*
- registry in Middlesex and Yorkshire, *ib.*
- assignment of charge, 570.
- expenses of local authority, *ib.*
- public works loan commissioners to advance money, *ib.*
- service of notice on local authority, *ib.*
- notice by local authority to be signed by clerk, *ib.*
- penalty for obstructing officer of health, *ib.*
- penalty for preventing execution of Act, *ib.*
- appearance of local authority, *ib.*
- penalties recoverable before two justices, 571.
- jurisdiction of certain magistrates, *ib.*
- schedules of forms, *ib.*

LORD'S DAY.

- sabbath-breaking, 573.
- fairs, etc., on feast-days, or Sundays, 574.
- sports on, *ib.*
- places of entertainment on, *ib.*
- killing game on, *ib.*
- trading on, *ib.*
- dressing of meat for private families, victualling-houses, selling milk, etc., 575.
- prosecution to be within ten days, *ib.*
- mackerel, *ib.*
- alehouses, *ib.*
- baking bread, etc., on Sundays, *ib.*
- what cases within the 29 Car. 2, c. 7, *ib.*

LORD'S DAY—*continued.*

- one offence only on one day, 576, n. (a).
- travelling on, 577.
- in what manner the conviction shall be, 577.
- penalty, how levied, *ib.*
- if insufficient distress, the offender shall be set in stocks, *ib.*
- forfeitures, how disposed of, *ib.*
- exemptions from toll, 578.
- serving process on, *ib.*
- ecclesiastical process, *ib.*
- justice's warrant to obtain sureties for good behaviour, *ib.*
- arresting for a rescue or escape, *ib.*
- bail taking defendant, *ib.*
- warrant of commitment for a penalty cannot be executed on, *ib.*
- judicial acts may not be done on, *ib.*
- discharge of prisoners in gaols on Sunday, *ib.*
- elections of officers of corporations on, *ib.*
- warrants on the 3 Car. 1, c. 1, and 29 Car. 2, c. 7, to levy 20s. on carrier for travelling on Lord's Day; which same will do, *mutatis mutandis*, for other penalties under this title, 579.

LOST INSTRUMENT.

- larceny of lost property, 221.

LUNATICS.

- miscellaneous points as to, 580, n. (a).

I. *How far liable for Crimes.—Prosecution and Treatment of Insane Criminals.*

- four kinds of lunacy, 581.
- drunkard's liability for crimes, *ib.*, n. (a).
- liability of, for crimes, 582.
- insanity when a defence, 583.
- effect of delusions, 584.
- question for the jury, *ib.*
- becoming insane before trial, 586.
- how tried whether defendant insane, *ib.*
- jury to decide on insanity, *ib.*
- how persons acquitted on ground of insanity to be disposed of, 587.
- grand jury to return true bill, *ib.*, n. (a).
- when found insane on arraignment, *ib.*
- on trial, *ib.*
- on discharge for want of prosecution, 588.
- persons apprehended as insane or dangerous idiots may be sent to lunatic asylums, 588.
- justices may inquire into settlements of lunatics, and make orders for maintenance, 589.
- appeal, *ib.*
- persons not insane may be liberated, 590.
- discharge of recovered lunatics, *ib.*
- extent of Act, *ib.*
- prisoners becoming insane after conviction, *ib.*
- justices to inquire as to settlements, and make orders for maintenance, *ib.*

LUNATICS—*continued.*

- I. *How far liable for Crimes, etc.—cont.*
 in case of persons possessed of property, 591.
 misdemeanants acquitted on ground of insanity, 592.
 appeal by party aggrieved, *ib.*
 appeal by guardians or overseers, 593, 599.
 orders for maintenance of insane prisoners, 593.
 interpretation of 3 & 4 Vict. c. 54, *ib.*
 extent of Act, 594.
 the 23 & 24 Vict. c. 75, *ib.*
 asylums for criminal lunatics appointed, *ib.*
 secretary of state may direct lunatics to be confined in asylum, *ib.*
 not to affect other provisions made by the Crown, 595.
 secretary to appoint officers, *ib.*
 to make rules, *ib.*
 council to superintend, *ib.*
 removal and discharge of lunatics, *ib.*
 secretary of state may permit lunatics to be absent, 596, 600.
 Provisions of 3 & 4 Vict. c. 54, as to expenses of conveyance and maintenance incorporated, *ib.*
 escape and recapture of lunatics, 596.
 punishment for rescue, or permission of escape, *ib.*
 penalty on officers or servants ill-treating lunatics, *ib.*
 commissioners in lunacy to visit asylums, 597.
 report to secretary of state, *ib.*
 schedule. Statement to medical superintendent, *ib.*
 prisoners becoming insane, 598.
 justices to inquire, *ib.*
 upon certificate secretary of state to grant warrant of removal, *ib.*
 prisoner sentenced to death, *ib.*
 secretary of state to appoint medical men to inquire, *ib.*
 warrant of secretary of state to remove such prisoner, *ib.*
 prisoner afterwards sane, how dealt with, *ib.*
 prisons under directors of convict prisons, 599.
 provisions of 3 & 4 Vict. c. 54, and 23 & 24 Vict. c. 75, incorporated, *ib.*
 maintenance of insane prisoners to be borne by common fund of union, *ib.*
 appeal by overseers repealed, *ib.*
 extent of Act, *ib.*
 schedule; certificate of insanity of prisoner under sentence of death, *ib.*
 "The Criminal Lunatics Act, 1867."
 "criminal lunatic," 599.
 extent of Act, 600.
 application of 23 & 24 Vict. c. 75, ss. 9 and 10, *ib.*

LUNATICS—*continued.*

- I. *How far liable for Crimes, etc.—cont.*
 secretary of state to give conditional order of discharge, 600.
 removal of lunatic to county asylum on expiration of sentence, *ib.*
 II. *County and Public Lunatic Asylums, Sending Lunatics to, and Care and Treatment of them.*
 "Lunatic Asylums Act, 1853," 601.
 repeal of former Acts, 601.
 As to providing Asylums and Appointment of Committees of Visitors, 601.
 justices to provide asylum, *ib.*
 notice of intention to appoint a committee for that purpose, 602.
 justices to appoint committee for uniting, etc., *ib.*
 subscribers to hospital to appoint committee for uniting, etc., 603.
 committees of existing asylums may agree to unite, *ib.*
 where committee already appointed, etc., *ib.*
 justices of boroughs may contract for reception of pauper lunatics of boroughs, *ib.*
 boroughs contributing to county asylum, 604.
 notice to separate from county, *ib.*
 borough not having six justices to be annexed to county, *ib.*
 recorder to appoint two justices to be members of committee of visitors, 605.
 boroughs neglecting to provide may be annexed to county by secretary of state, *ib.*
 justices to appoint two to be members of committee, *ib.*
 powers of committees enlarged, *ib.*
 appointment of new committees in lieu of old, 606.
 notice of appointment, *ib.*
 form of agreement between committees uniting, *ib.*
 additional stipulations in agreement, 607.
 not subject to control of sessions, *ib.*
 repeal of stipulations, *ib.*
 proportions of expenses and visitors varied on further union, 608.
 payment, etc., of money towards prior expenses, *ib.*
 agreement to be reported to quarter sessions, etc., *ib.*
 visitors to be elected to carry out agreement, *ib.*
 committee authorized to superintend erection of asylums to be deemed committee of visitors, 609.
 visitors elected annually, *ib.*
 separate committee for every asylum, *ib.*
 except by approval of secretary of state, *ib.*
 meetings of visitors, *ib.*

LUNATICS—*continued.*II. *County and Public Asylums, etc.—cont.*

election of chairman, 610.
 number of members at meeting, *ib.*
 mode of voting, *ib.*
 clerk to call meetings of visitors, *ib.*
 chairman to convene meetings, *ib.*
 visitors to appoint clerk, *ib.*
 committee of visitors to continue till new committee elected, *ib.*
 supplying vacancies in committee, *ib.*
 continuing members may act, 611.
 secretary of state may require county or borough to provide asylum, *ib.*
 where accommodation inadequate, asylum to be enlarged or another built, *ib.*
 visitors to procure estimates and purchase lands, etc., 612.
 contractors to give security, *ib.*
 contracts, etc., entered in book and open to inspection, *ib.*
 visitors to report, *ib.*
 power to visitors to purchase in consideration of rent reserved, 613.
 to take a lease for rent, *ib.*
 asylums erected beyond limits of county or borough, *ib.*
 assessment to local rates not to be increased, *ib.*
 lands, etc., used for the purposes of the asylum, *ib.*, n. (d).
 provisions of "Lands Clauses Consolidation Act" incorporated and extended to authorize exchanges, 614.
 provision for appointment of new trustees, *ib.*
 visitors to order repairs not exceeding £400 per annum, *ib.*
 payment of expenses and repairs, 615.
 not exceeding £100 without notice, *ib.*
 visitors with consent of secretary of state to dissolve unions, *ib.*
 to sell or exchange lands or buildings, 616.
 application of purchase-moneys, *ib.*
 to get released from contracts, 617.
 to contract for reception of pauper lunatics into asylums of other counties or hospitals or licensed houses, *ib.*
 limit of period of such contract, *ib.*
 money payable under contract, 618.
 to order admission of other lunatics where asylum can accommodate more than the lunatics of the county or borough, *ib.*
 visitor not to have interest in contract, 619.
 plans, etc., to be submitted to commissioners, and approved by secretary of state, *ib.*

How Moneys to be raised for providing Asylums, 619.

by county and borough rates, *ib.*
 justices of counties and councils of boroughs to mortgage rates, 620.
 public works loan commissioners to lend money, *ib.*

LUNATICS—*continued.*II. *County and Public Asylums, etc.—cont.*

payment of interest on mortgages, and part of principal, 620.
 paying money within thirty years, 621.
 persons lending money on mortgage of rates, etc., not bound to give proof that notices have been given, etc., *ib.*
 raising money to pay off money borrowed, *ib.*

Regulation and Management of Asylums and Appointment of Officers, 622.

visitors to submit rules to secretary of state, *ib.*
 to make regulations and determine diet of lunatics, *ib.*
 to fix weekly rate for maintenance not exceeding 14s. per week, *ib.*
 justices at quarter sessions may increase rate, 623.
 visitors to appoint chaplain, *ib.*
 ministers of the patient's own persuasion, *ib.*
 visitors to appoint officers, *ib.*
 clerk to give notice of dismissal of attendants to commissioners, 624.
 superannuations to superintendent, etc., *ib.*
 clerk to keep accounts, and send abstract to secretary of state and commissioners, *ib.*
 treasurer to keep accounts, 625.
 visitor to audit accounts, *ib.*
 two visitors to visit once in two months, *ib.*
 annual reports by committees of visitors to justices at quarter sessions, etc., *ib.*
 copies sent to commissioners, *ib.*
 list of pauper lunatics made half yearly and laid before visitors, *ib.*
 copies sent to clerks of the peace and commissioners, *ib.*
 lists of private patients, *ib.*
 clerk of board of guardians or overseers to make annual returns, 626.
 medical persons, guardians, and overseers to visit pauper patients, *ib.*

Provisions concerning Visitation, Confinement, Removal, and Discharge of Lunatics, 626.

every pauper lunatic not in an asylum, etc., to be visited once a quarter by medical officer, *ib.*
 lists to be sent to commissioners, *ib.*
 sending pauper lunatics to asylums, 627.
 lunatics wandering at large, 629.
 not taken care of, *ib.*
 cruelly treated, etc., *ib.*
 justices to order payment of fee to physician, etc., 630.
 penalties on medical officers and others omitting to give notice of pauper lunatic, *ib.*
 penalty for delaying to execute orders, 631.

LUNATICS—continued.

II. *County and Public Asylums, etc.—cont.*

orders of justices, etc., extended to authorize reception into hospitals or licensed houses, 631.

but lunatics to be sent to asylum if possible, *ib.*

no pauper receivable without order and certificate, *ib.*

no person receivable except under this Act without order and two certificates, 632.

medical certificate to state facts, *ib.*

who not to sign certificate, 633.

two visitors, justices, to order removal of pauper lunatic, 633, 665.

pauper lunatics not receivable except in county or borough asylum without endorsement of order by a visitor, 634.

orders not compulsory on hospitals or licensed houses, *ib.*

discharge of lunatics from asylums, *ib.*

overseers, etc., to remove lunatics on notice of discharge, *ib.*

penalty for refusal or wilful neglect, *ib.*

visitors may discharge lunatic on undertaking of relative, *ib.*

commissioners may order removal, 635.

person who signed order for reception may order discharge, *ib.*

where person who signed is dead, *ib.*

where patient certified dangerous, *ib.*

transfer under control of attendant, *ib.*

transfer of private and single patients, 636.

amendment of orders and certificates, *ib.*

persons received may be detained till removal or discharge, *ib.*

or be recaptured within fourteen days, *ib.*

clerk to make entry of reception and transmit order and certificate to commissioners, *ib.*

weekly journal and case book, 637.

copies of entries by visiting commissioners to be sent to office of commissioners, *ib.*

cause of death of lunatic to be sent to registrar of deaths, commissioners, and relieving officers or overseers, *ib.*

entries of deaths, discharges, etc., and notice to commissioners in case of escape or recapture, 638.

As to Expense of Maintenance and Removal, etc., of Pauper and other Lunatics, 638.

how justices to proceed where lunatic has property, *ib.*

pauper lunatic chargeable to parish from which sent, 639.

justices to make order upon officers of unions and parishes for maintenance of lunatics, *ib.*

two justices may adjudge settlement and order payment, etc., accordingly, *ib.*

LUNATICS—continued.

II. *County and Public Asylums, etc.—cont.*

if settlement cannot be ascertained, then chargeable to county, 641.

reimbursement to county where lunatic afterwards adjudged to belong to a parish, 642.

justices to make orders out of jurisdiction, *ib.*

order for payment of maintenance to extend to any asylum, etc., to which lunatic is removed, *ib.*

costs of irremovable pauper lunatics, by whom borne, 643.

repeal of 12 & 13 Vict. c. 103, s. 5, 644.

guardians, etc., may pay charges without orders of justices, *ib.*

lunatics' property available for maintenance, *ib.*

liability of relations of pauper lunatic, 645.

appeal by persons aggrieved, *ib.*

party obtaining order of adjudication to send copy thereof and statement of grounds to the parish or county affected, *ib.*

appeal against order of adjudication, *ib.*

copy of depositions to be furnished on application, 646.

notice of appeal within certain time after notice of order, *ib.*

grounds of appeal, 647.

sufficiency of statement of grounds of adjudication or appeal, *ib.*

power to amend statement, *ib.*

power for court to amend, *ib.*

proviso as to *certiorari*, *ib.*

costs of frivolous or vexatious grounds, 648.

costs against losing party, *ib.*

decisions of court final, *ib.*

abandonment of orders, *ib.*

pauper lunatics sent to asylums under any other Act, etc., 649.

in cases of inquiries and appeals, guardians and officers interested to have access to the lunatic, *ib.*

expenses of burial, removal, or discharge of a pauper, *ib.*

money ordered to be paid to be levied by distress, *ib.*

or by action, *ib.*

Miscellaneous, 649.

medical men signing false certificates and persons not being medical men giving certificates as such, guilty of a misdemeanour, 650.

penalty on officers or servants ill-treating lunatics, *ib.*

penalty on officers, etc., allowing lunatics to be at large without permission, *ib.*

visitors how to sue and be sued, *ib.*

removal of clerk not to abate action, *ib.*

secretary of commissioners and clerk to visitors may prosecute, *ib.*

LUNATICS—*continued.*II. *County and Public Asylums, etc.—cont.*

- penalties, how recovered, 650.
- application of penalties, *ib.*
- appeal to quarter sessions, 651.
- council of borough to erect asylums as well as justices, *ib.*
- committee of council to have same power as committee of visitors, *ib.*
- every city, etc., not being a borough to be annexed to and rated as part of the county, *ib.*
- interpretation clause, 652.
- Act not to affect criminal lunatics, 653.
- commencement of Act, 654.
- extent of Act, *ib.*
- short title, *ib.*
- schedules of forms, *ib.*

The 18 & 19 Vict. c. 105, 663.

- any single county or borough may unite with the subscribers to a hospital, and any committee of visitors of an existing asylum may so unite, *ib.*
- proportion of expenses between any county and borough may be fixed with reference to accommodation, *ib.*
- agreements for uniting, contribution according to population, 664.
- on dissolution of union a new asylum to be provided, *ib.*
- provisions to apply to councils of boroughs, *ib.*
- places becoming boroughs since 1853 to be deemed boroughs annexed to the counties in which they are situate, 665.
- visitors ordering removal of pauper lunatics, *ib.*
- powers of commissioners and visitors to continue applicable after expiration of licence while any patients are in the house, *ib.*
- renewal of contracts, *ib.*
- burial of pauper lunatics, 666, 671.
- agreements with cemetery company or burial board, 666.
- committee of visitors may convey land for burial ground for lunatics, etc., *ib.*
- pauper lunatics in borough not contributing chargeable to borough, 667.
- seals of commissioners, justices, etc., to orders dispensed with, *ib.*

The 19 & 20 Vict. c. 87, 668.

- recorders of annexed boroughs to appoint two justices to be members of committee for providing an asylum, *ib.*

The 24 & 25 Vict. c. 55, 668.

- lunatics to be chargeable on common fund, *ib.*
- orders in lunacy obtained by boards of guardians, *ib.*
- or appealed against, *ib.*

LUNATICS—*continued.*II. *County and Public Asylums, etc.—cont.**The "Lunacy Acts Amendment Act, 1862," 668.*

- interpretation of terms, *ib.*
- construction of Act, 669.

Establishment of County Asylums, 669.

- plans, etc., not approved by quarter sessions submitted to secretary of state, *ib.*
- estimates to accompany plans, 670.
- excess of payment may be paid to a building and repair fund, *ib.*
- contracts for reception of lunatic, *ib.*
- care of chronic lunatics, *ib.*
- burial of lunatics dying in asylum, 671.
- "Lands Clauses Act, 1845," incorporated, *ib.*
- taking additional lands on lease, *ib.*
- superannuation of officers, 672.
- of matrons, *ib.*

Admission and Visitation of Patients, 672.

- sending pauper lunatics to asylums, *ib.*
- lunatics proper to be sent to asylums, 673.
- amendment of form of list as respects lunatics in workhouses, *ib.*
- relative to be named in order of admission, *ib.*
- same order, etc., to justify detention of private patient as pauper, *ib.*
- removal of single pauper patients to asylums, 674.
- effect of order for removal, *ib.*
- statement of condition of pauper lunatic to be sent to guardians, *ib.*
- visiting committee, etc., to enter observations in a book respecting accommodation, etc., in workhouses, *ib.*

Miscellaneous Clauses, 674.

- report to coroner of death of patient, 675.
- chargeability of pauper lunatics where found in certain boroughs, *ib.*
- "physician, surgeon, or apothecary," *ib.*
- "county," *ib.*
- schedule, 676.

The "Lunacy Acts Amendment Act, 1863," 676.

- confirmation of agreements for a common asylum between counties, 677.
- "chronic lunatics," *ib.*

The "Lunacy Acts Amendment Act, 1865," 677.

- "county," *ib.*
- powers of justices of such counties, *ib.*

III. *Private Lunatic Asylums,—Sending of Pauper Lunatics into.**The 8 & 9 Vict. c. 100, 678.*

- repeal of former Acts, *ib.*
- proviso, *ib.*
- commissioners styled "The Masters in Lunacy," *ib.*
- appointment of "The Commissioners in Lunacy," *ib.*

LUNATICS—*continued.*III. *Private Lunatic Asylums, etc.—cont.*

salary, 678.
 in case of death, etc., 679.
 retiring pensions, *ib.*
 oath of commissioners, *ib.*
 common seal, *ib.*
 evidence, *ib.*
 chairman, *ib.*
 secretary, *ib.*
 clerks, *ib.*
 oaths of, *ib.*
 documents, *ib.*
 jurisdiction, immediate, defined, *ib.*
 quarterly meetings for granting licences, 680.
 summoning meetings, *ib.*
 justices in general or quarter sessions to license houses and appoint visitors, *ib.*
 appointment of visitor in case of death, etc., 681.
 lists published by clerk of the peace in a newspaper and sent to commissioners, *ib.*
 visitor being physician, etc., remunerated, *ib.*
 clerk of the peace, etc., appointed clerk to visitors, *ib.*
 his duties and remuneration, 682.
 assistants to clerk, *ib.*
 oath of assistant, *ib.*
 disqualifications for commissioner, visitor, secretary, clerk, or assistant, *ib.*
 disqualified person acting, a misdemeanour, 682.
 penalty on physicians, etc., signing a certificate or attending patient, etc., *ib.*
 fourteen days' notice of application for plan of licensed house, 683.
 notice of additions and alterations, *ib.*
 untrue statement, etc., a misdemeanour, 684.
 copy of licence to be sent to commissioners, *ib.*
 renewal of licence, *ib.*
 licence to be made in given form, etc., *ib.*
 for not more than thirteen months, *ib.*
 no licence, etc., in borough without consent of recorder, *ib.*
 charge for licences, *ib.*
 reduction of charge in certain cases, 685.
 application of moneys by secretary of commissioners, *ib.*
 he to make out annual account to be laid before lords commissioners of the treasury, *ib.*
 balance of payments over receipts may be paid out of the consolidated fund, *ib.*
 application of moneys by clerk of the peace, 686.
 clerks of the peace to make annual accounts to be laid before justices in quarter sessions, *ib.*
 balance of payments over receipts may be

LUNATICS—*continued.*III. *Private Lunatic Asylums, etc.—cont.*

paid out of the county or borough funds, 686.
 incapacity or death of person licensed, *ib.*
 in case of disuse of house from various other causes, 687.
 revocation of licences granted by justices, *ib.*
 prohibition of renewal of licences, *ib.*
 hospitals to have their regulations printed, a resident medical attendant, and to be registered, 688.
 no house to be kept for reception of two or more lunatics without licence, *ib.*
 entry of reception to be made in certain form, *ib.*
 form of patient's disorder to be entered in book by medical attendant, 689.
 notice of reception to commissioners and clerk of visitors, *ib.*
 notice of escape and recapture, *ib.*
 entry and notice in case of death, discharge, or removal, 690.
 statement of cause of death sent to commissioners and clerk to visitors, *ib.*
 abuse, ill-treatment, or neglect a misdemeanour, *ib.*
 houses having 100 patients to have a resident medical attendant, and those having less to be visited, *ib.*
 commissioners, etc., where less than eleven persons, may lessen number of medical visits, 691.
 the "Medical Visitation Book," weekly entries in, *ib.*
 a medical "Case Book" to be kept, *ib.*
 all licensed hospitals and houses to be visited by the commissioners, 692.
 licensed houses not in jurisdiction of commissioners visited four times a year by visitors, 693.
 proprietor, etc., to show every part and every patient, *ib.*
 inquiries by commissioners and visitors, *ib.*
 books and documents to be produced, 694.
 "Visitor's Book" for the result of inspection and inquiries, *ib.*
 "Patient's Book" for observations as to state of patients, *ib.*
 proprietor, etc., to transmit all entries to clerk of visitors and to commissioners, *ib.*
 commissioners to make entry as to state of mind of doubtful patient to be sent to clerk of visitors, who are thereupon to visit such patient, 695.
 visiting commissioners to report, *ib.*
 any five commissioners to make rules, *ib.*
 visits by night, *ib.*
 person who signed order of reception may discharge or remove, 696.
 discharge of private patient where person who signed is incapable, *ib.*

LUNATICS—*continued.*III. *Private Lunatic Asylums, etc.—cont.*

- removal or discharge of pauper patients, 696.
- where patient certified to be dangerous, *ib.*
- commissioners may discharge any patient confined in house licensed by them, 697.
- special visits to discharge patients by two commissioners, *ib.*
- by two visitors, *ib.*
- every order for discharge to be signed and subject to certain restrictions, *ib.*
- not to extend to persons found lunatic by inquisition, or confined by authority of secretary of state, 698.
- visitors and commissioners to regulate diet of pauper lunatics, *ib.*
- visitor may order clerk to search and give information as to confinement of any person, *ib.*
- commissioner may order secretary to search and give information, *ib.*
- commissioner or visitor may give an order for admission of any friend or relation, etc., 699.
- proprietor, etc., with consent, etc., may send patient away for his health, *ib.*
- in case of removal, escape, etc., original order for reception to remain in force, *ib.*
- commissioners to report to the Lord Chancellor, *ib.*
- persons not to take charge of single lunatic except as provided by the Acts of Parliament, 700.
- copy of order, etc., with respect to lunatics in unlicensed houses to be entered in a private register, 701.
- members of private committee to visit unlicensed houses receiving single patient, and to report, *ib.*
- Lord Chancellor may order lunatic to be removed on such report, etc., *ib.*
- commissioners to report if property not duly applied, etc., 702.
- Lord Chancellor to direct master in lunacy to report, and to appoint guardians of lunatic's person and estate, and direct application of income, etc., *ib.*
- masters in lunacy to have all necessary powers, *ib.*
- Lord Chancellor to make orders, etc., and fix fees, 703.
- master's expenses, *ib.*
- proprietors, etc., may plead the order, etc., for receiving any lunatic in bar of all proceedings at law, *ib.*
- commissioners and visitors may summon witnesses, 704.
- penalty for non-compliance, *ib.*
- payment of expenses of witnesses, *ib.*
- on complaint made of any offence, justices to require attendance of person charged, and to adjudge, *ib.*

LUNATICS—*continued.*III. *Private Lunatic Asylums, etc.—cont.*

- recovery and application of penalties, 705.
 - form of conviction before justices, *ib.*
 - appeal to quarter sessions, 706.
 - actions commenced within six calendar months, *ib.*
 - Act may be given in evidence, *ib.*
 - who to prosecute and sue for penalties, *ib.*
 - offenders against the repealed Acts prosecuted under this Act, 707.
 - no person punishable for not sending any copy, etc., if proved to have been posted, etc., *ib.*
 - costs of commissioners paid by their secretary, *ib.*
 - of visitors by clerk of the peace, *ib.*
 - commissioners to visit asylums and gaols, *ib.*
 - visitation of lunatics under care of committees, 708.
 - of state and criminal lunatics, *ib.*
 - other lunatics, *ib.*
 - power for Lord Chancellor and secretary of state to authorize special visitation, *ib.*
 - interpretation clause, 708, 709.
 - what is unsoundness of mind amounting to lunacy, 710.
 - boroughs and counties to comprise all places therein not having a separate commission of the peace, *ib.*
 - extent of Act, *ib.*
 - schedules of forms, *ib.*
- The 16 & 17 Vict. c. 96, 714.*
- as to what may be included in one licence, *ib.*
 - one of the persons receiving licence to reside on the premises, *ib.*
 - repeal of sects. 45-49 of 8 & 9 Vict. c. 100, *ib.*
 - no person not a pauper to be received without a certain order and certificate, *ib.*
 - proviso as to certificate of one medical practitioner only, 715.
 - any person discharged may be retained, 716.
 - relative or friend may be received, *ib.*
 - paupers not to be received without a certain order of certificate, *ib.*
 - order and certificates for single patient same as for private patient into licensed house, *ib.*
 - penalty on officers, etc., ill-treating, etc., lunatics, *ib.*
 - medical certificate to specify facts, 717.
 - amendment of, *ib.*
 - who not to sign certificates, etc., *ib.*
 - giving false certificates, 718.
 - person not a medical man giving certificates, *ib.*
 - medical visitation less than once a fortnight; but if patient in care of medical

LUNATICS—*continued.*III. *Private Lunatic Asylums, etc.—cont.*

- man he is to make an entry once a fortnight as to health, 718.
- visitors of licensed houses may visit single patients on request of commissioners, *ib.*
- annual report by medical man to commissioners, *ib.*
- discharge of single patients from licensed houses, 719.
- Lord Chancellor on report of commissioners may order discharge, etc., *ib.*
- on recovery of patient notice to be given to friends, or guardians in case of pauper, *ib.*
- in default of discharge notice to commissioners and visitors, *ib.*
- in case of death, *ib.*
- transfer of private and single patients, *ib.*
- notice of discharge of single patients, 720.
- change of residence of persons having charge of single patients, *ib.*
- removal of patients for health, *ib.*
- Lord Chancellor may require statement of property of lunatic, *ib.*
- form of notice of admission, *ib.*
- form of medical visitation book, 721.
- notice of dismissal for misconduct of attendants, *ib.*
- powers vested in private committee to be vested in the commissioners, *ib.*
- visitation of workhouses, *ib.*
- commissioners may employ persons to make necessary inquiries and report, *ib.*
- regulations for hospitals to be submitted to secretary of state, 722.
- commissioners to make rules for government of licensed houses, 722.
- time for making reports to Lord Chancellor as to state of asylums, etc., *ib.*
- payment of persons employed to visit and examine lunatic under 8 & 9 Vict. c. 100, s. 112, *ib.*
- penalty on persons obstructing orders of Lord Chancellor, or secretary of state, or commissioners, *ib.*
- royal hospital of Bethlehem subject to the Act, 723.
- interpretation clause, *ib.*
- Acts construed together, *ib.*
- not to affect criminal lunatics, *ib.*
- secretary of commissioners, if a barrister of five years' standing, eligible as commissioner, 724.
- commencement of Act, *ib.*
- schedules of forms, *ib.*
- The 18 & 19 Vict. c. 105, s. 9 et seq., 728.*
- powers of commissioners and visitors to be applicable to house licensed after expiration of licence while any patients are therein, *ib.*
- seals, etc., dispensed with, *ib.*

LUNATICS—*continued.*III. *Private Lunatic Asylums, etc.—cont.*

- no personal examination by commissioners required as to patient's desire to remain, 729.
- consent of committee as to patient sent away for health, *ib.*
- detention after expiration, etc., of licence a misdemeanour, *ib.*
- Act to be read with amending Acts, *ib.*
- The "Lunacy Acts Amendment Act, 1862," 729.*
- inspection by commissioners before licence granted by justices, *ib.*
- notice of alterations given to commissioners, 730.
- non-resident proprietors, *ib.*
- penalty on infringing terms of licence, 731.
- extension of powers to take boarders in houses, *ib.*
- Admission and Visitation of Patients, 731.*
- order for reception, etc., of persons found lunatic by inquisition, *ib.*
- persons signing reception orders to have seen patient within one month, *ib.*
- persons prohibited from signing orders, *ib.*
- relative of pauper to be named in order, 732.
- same order, etc., for private patient as for pauper, *ib.*
- defective certificates, effect of, *ib.*
- transmission of documents to commissioners on admission of patient, *ib.*
- visits by commissioners, *ib.*
- single commissioner to visit asylums and gaols, 733.
- removal of lunatic from workhouse to asylum, *ib.*
- statement of condition of pauper lunatics to be transmitted to guardians, *ib.*
- inquiries by commissioners or visitors as to money paid to superintendent or proprietor on account of lunatic, *ib.*
- copies of entries of commissioners and visitors, *ib.*
- visiting committee to enter observations in a book respecting diet, etc., of lunatics in workhouse, 734.
- Miscellaneous Clauses, 734.*
- patient absent on trial, *ib.*
- penalty on officer for conniving at escape, *ib.*
- correspondence of private patients, *ib.*
- statement of condition of single patients, 735.
- commissioners to prescribe forms, etc., of medical visitation book, *ib.*
- discharge of a private patient, *ib.*
- report to coroner of death of single patient, *ib.*
- examination on oath by commissioners, 736.

LUNATICS—*continued*.III. *Private Lunatic Asylums, etc.—cont.*

definition of physician, surgeon, or apothecary, 736.
schedules, *ib.*

MACHINERY.

malicious injuries to, 775.

See MALICIOUS INJURIES TO PROPERTY.

MADMEN. See LUNATICS.

MAGISTRATES. See JUSTICES OF THE PEACE.

Police and Stipendiary Magistrates.
the 5 & 6 Will. 4, c. 76, s. 99, 736.

"*The Stipendiary Magistrates Act, 1863*," 737.

interpretation clause, *ib.*

bye-law as to salary, on which Crown may appoint justice, 738.

local board to provide police office, *ib.*

justice need not be qualified by estate, *ib.*

not to sit in courts of gaol delivery, 739.

magistrate to appoint clerk, being an attorney-at-law, *ib.*

clerk disqualified from acting as attorney, *ib.*

fees to be taken, *ib.*

remitter of fees, and award of costs, *ib.*

clerk to pay fees to treasurer, *ib.*

fees to form one general fund, *ib.*

local board to make rates for payment of magistrate, etc., *ib.*

application of fines and penalties, *ib.*

penalties appropriated under local Acts, 740.

stipendiary magistrate may act alone, *ib.*

even at petty sessions, *ib.*

saving of quarter sessions, special sessions, and the granting of licences, *ib.*

saving as to metropolitan police magistrates, *ib.*

magistrates acting in the metropolitan district where no police court, may commit to county gaol, etc., *ib.*

appointment of deputy by stipendiary magistrate, *ib.*

appointment of county stipendiary magistrates to the metropolitan police courts, 741.

MAIL.

stealing, etc., from. See POST OFFICE.

MAIM.

what it is, 741.

what not a maim, *ib.*

cheats by maim, *ib.*

castration, *ib.*

malicious injuries. See MALICIOUS INJURIES TO THE PERSON.

MAINTENANCE. See BUYING OF TITLES.

I. *In general.*

maintenance, what, 742.

how punishable by common law, *ib.*

how by statute, 743.

the statutes declaratory only of common law, *ib.*

II. *Champerty in particular.*

what it is, 743.

how punishable by common law, 744.

how by statute, *ib.*

III. *Embracery of Jurors.*

what it is, 745.

how punishable by the common law, *ib.*

how by statute, *ib.*

form of indictment for maintenance, *ib.*

MALICE.

when presumed, 754.

to establish a libel, 331, 346.

in case of malicious injuries not necessary against the owner, 793.

MALICIOUS INJURIES TO THE PERSON.

as to injuries by furious driving of stage coaches, see POLICE (TOWNS).

I. *The General Clauses of the 24 & 25 Vict.* c. 100.

a person loitering at night, and suspected of felony, may be apprehended, 746.

punishment of principals in second degree and accessories, 747.

admiralty jurisdiction, *ib.*

hard labour, *ib.*

solitary confinement and whipping, *ib.*

finer and sureties of the peace, 748.

no *certiorari*, etc., *ib.*

prosecutions by guardians and overseers, *ib.*

costs of, *ib.*

clerk to prosecute, *ib.*

prosecutor's costs in cases of assault, 748.

levied by distress, *ib.*

summary proceedings, 749.

except in London, etc., *ib.*

costs in misdemeanours, *ib.*

extent of Act, *ib.*

commencement of Act, *ib.*

II. *Poisoning, Shooting, Wounding, or Suffocating, etc.*

poisoning, stabbing, wounding, etc., with intent to murder, 749.

administering poison so as to endanger life or inflict grievous bodily harm, 750.

with intent to injure and annoy, *ib.*

what a poisoning, *ib.*

what a wounding, 751.

the intent to murder, *ib.*

the indictment, etc., 752.

attempts to murder by poisoning, shooting, drowning, suffocating, etc., 753.

MALICIOUS INJURIES, etc.—*continued*.II. *Poisoning, Shooting, etc.—cont.*

- what an attempt to poison, 753.
- what a shooting at, etc., *ib.*
- what an attempt to discharge arms, etc., *ib.*
- by any other means attempting to commit murder, 754.
- shooting, or wounding, etc., with intent to maim, or resist lawful apprehension, *ib.*
- what shall constitute loaded arms, *ib.*
- inflicting bodily injury with or without weapon, *ib.*
- unlawfully, etc., *ib.*
- maliciously, *ib.*
- presumption of malice, *ib.*
- intent to maim, disfigure, or disable, 755.
- intent to do grievous bodily harm, 756.
- intent to prevent apprehension or detainer of a person, etc., *ib.*
- attempting to choke, etc., in order to commit any indictable offence, 757.
- using chloroform, etc., to commit any indictable offence, 758.
- the indictment, *ib.*

III. *Intending to Murder or to cause Grievous Bodily Harm, etc., by the Explosion of Gunpowder, etc.*

- destroying, etc., a building with intent to murder, 758.
- causing bodily injury, 759.
- causing gunpowder to explode with intent, etc., *ib.*
- sending an explosive substance to any person with intent, etc., *ib.*
- throwing corrosive fluid with intent, etc., *ib.*
- placing gunpowder near a building with intent to do bodily injury, *ib.* See also MALICIOUS INJURIES TO PROPERTY.

IV. *Murder of or Concealing the Birth of a Child.*

- what amounts to child murder, 759.
- proof of child being born alive, 760, n. (a).
- conviction for concealment on trial for murder, 760, 761.
- concealing birth of a child, 761.
- not triable at sessions, *ib.*
- observations and decisions as to the offence, *ib.*
- list of forms, 763.

MALICIOUS INJURIES TO PROPERTY.
division of subject, 767.I. *Injuries by Fire to Buildings and Goods therein.*

- setting fire to a church or chapel, 768.
- unlawfully and maliciously, *ib.*

MALICIOUS INJURIES, etc.—*continued*.I. *Injuries by Fire to Buildings, etc.—cont.*

- arson at common law, *ib.*
- "church, chapel, and meeting-house," 768.
- setting fire to a dwelling-house, any person being therein, *ib.*
- the intent, *ib.*
- "any person being therein," *ib.*
- "dwelling-house," 769.
- setting fire to a house, outhouse, manufactory, farm-building, etc., *ib.*
- "outhouse," *ib.*
- "stable," *ib.*
- "shed," 770.
- "building used in trade," *ib.*
- intent, *ib.*
- indictment, *ib.*
- evidence from recent possession, *ib.*
- evidence of other acts, *ib.*
- evidence to rebut the intent, *ib.*
- setting fire to any railway station, 771.
- to any public building, *ib.*
- to other buildings, *ib.*
- to goods in any building, the setting fire to which is felony, *ib.*
- "under such circumstances," *ib.*
- intent, 772.
- attempting to set fire to buildings, *ib.*
- attempts, *ib.*
- aiding in attempts, *ib.*
- fire through negligence of servants, *ib.*

II. *Injuries by Explosive Substances to Buildings and Goods therein.*

- destroying or damaging a house with gunpowder any person being therein, 773.
- destroying by gunpowder with intent to murder, *ib.*
- with intent to do bodily harm, *ib.*
- attempting to destroy buildings with gunpowder, *ib.* See also MALICIOUS INJURIES TO THE PERSONS, and see *infra*.

III. *Injuries to Buildings by Rioters, etc.*

- rioters demolishing any church or other building, etc., 773.
- what is an intent to demolish, 774.
- demolishing by fire, *ib.*
- aiding in a demolition, *ib.*
- what constitutes a demolition, *ib.*
- what constitutes a beginning to demolish, *ib.*
- supposed right, *ib.*
- seamen riotously preventing loading of vessels, etc., *ib.*
- rioters injuring buildings or machinery, etc., 775.
- no intention to demolish, *ib.*

IV. *Injuries to Buildings by Tenants.*

- Tenants maliciously injuring houses, etc., 775.

MALICIOUS INJURIES, etc.—continued.

IV. *Injuries to Buildings by Tenants—cont.*
 other provisions with respect to tenants, 775.
 punishment, *ib.*

V. *Injuries to Manufactures, Machinery, etc.*

destroying goods in process of manufacture, or destroying certain machinery, etc., 775.

what is a damage, 776.

stage of manufacture, *ib.*

destroying machines in other manufactures, thrashing-machines, etc., *ib.*

machines taken to pieces, *ib.*

what is a damaging, *ib.*

"machine, tool, or implement," *ib.*

VI. *Injuries to Corn, Trees, and Vegetable Productions.*

setting fire to crops of corn, etc., 777.

setting fire to a wood, *ib.*

indictment, *ib.*

setting fire to stacks of corn, etc., *ib.*

"stack of straw," *ib.*

"of pulse, corn, or grain," *ib.*

"of grain," *ib.*

"of wood" in a building, *ib.*

venue, *ib.*

intent, *ib.*

attempting to set fire to crops of corn, etc., or to any stack or steer, *ib.*

destroying hop-binds, 778.

destroying or damaging trees, etc., to the value of more than £1 in a pleasure ground, etc., *ib.*

to the value of more than £5 elsewhere, *ib.*

wherever growing to the amount of 1s., *ib.*
 second offence, 779.

third offence, *ib.*

where value under 1s., *ib.*

what a sufficient injury, *ib.*

destroying, etc., any fruit or vegetable production in a garden, *ib.*

second offence, *ib.*

destroying, etc., vegetable productions not growing in gardens, etc., *ib.*

VII. *Injuries to Fences.*

destroying, etc., any fence, wall, stile, or gate, 780.

second offence, *ib.*

malice, *ib.*

VIII. *Injuries to Mines.*

setting fire to a coal-mine, etc., 780.

property in the mine, *ib.*

attempting to set fire to a mine, *ib.*

conveying water in mine, obstructing the shaft, etc., 781.

property in the mine, *ib.*

workmen employed in working mine, *ib.*

malice and claim of right, *ib.*

damaging steam-engines, staiths, waggon-ways, etc., for working mines, *ib.*

MALICIOUS INJURIES, etc.—continued.

VIII. *Injuries to Mines—continued.*

what is a damaging, 782.

"steam-engine," *ib.*

"erection used in a mine," *ib.*

IX. *Injuries to Sea and River Banks and to Works on Rivers, Canals, etc.*

destroying, etc., any sea bank, etc., or river bank, etc., 782.

destroying, etc., any quay, etc., belonging to any harbour, etc., *ib.*

removing piles, etc., or obstructing the navigation of river or canal, *ib.*

X. *Injuries to Ponds.*

breaking down dam of a fishery, etc., or mill-dam and poisoning fish, 783.

claim of right, act done under, *ib.*

XI. *Injuries to Bridges, Viaducts, and Toll-bars.*

injuries to a bridge, viaduct, etc., 783.

where there is no highway, etc., *ib.*

destroying a turnpike gate, toll house, etc., *ib.*

bridges erected by turnpike commissioners, 784.

punishment for the offence, *ib.*

XII. *Injuries to Railway Carriages and Telegraphs.*

placing wood, etc., on railway with intent to obstruct or overthrow any engine, etc., 784.

placing wood, etc., on railway with intent to endanger safety of any person, *ib.*

railway not yet opened, *ib.*

malice, *ib.*

intent to endanger, *ib.*

throwing at any train with intent to endanger safety of any person, 785.

"upon any other engine," etc., *ib.*

obstructing engines or carriages on railways, *ib.*

"neglect or omission," *ib.*

endangering safety of any person by neglect, *ib.*

misconduct of servants of railway company, *ib.*

intent, *ib.*

evidence of intent, *ib.*

injuries to electric or magnetic telegraphs, *ib.*

summary proceedings, 786.

attempt to injure telegraphs, *ib.*

XIII. *Injuries to Works of Art.*

destroying, etc., works of art in museums, churches, etc., or in public places, 786.

XIV. *Injuries to Cattle and other Animals.*

killing or maiming cattle, 787.

maiming a horse at common law, *ib.*

what are cattle, *ib.*

"wounding," *ib.*

"maiming," *ib.*

setting a dog to bite sheep, *ib.*

MALICIOUS INJURIES, etc.—*continued.*XIV. *Injuries to Cattle, etc.—continued.*

- "killing," 787.
- indictment, *ib.*
- evidence, *ib.*
- cruelty to cattle, *ib.*
- killing or maiming other animals, *ib.*
- second offence, 788.
- what is included in "other animals," *ib.*

XV. *Injuries to Vessels, etc.*

- setting fire to a ship, 788.
- ships of war, *ib.*
- ropes of vessels on Thames, *ib.*
- London docks, etc., *ib.*
- Folkestone harbour, *ib.*
- misconduct of masters, seamen, etc., "Merchant Shipping Act," *ib.*
- Naval Discipline Act, *ib.*
- "cast away or destroy," *ib.*
- "vessel," *ib.*
- part owner, 789.
- setting fire to ships to prejudice owner or underwriter, *ib.*
- evidence, "goods on board the same," *ib.*
- attempting to set fire to a vessel, *ib.*
- placing gunpowder near a vessel with intent to damage it, *ib.*
- damaging ships otherwise than by fire, *ib.*
- exhibiting false signals, etc., 790.
- removing, etc., buoys, etc., *ib.*
- destroying wrecks, etc., *ib.*

XVI. *Sending Letters Threatening to Burn or Destroy.*

- necessary construction of the letter, 791.
- threat a question for the jury, *ib.*
- threat to burn standing corn, *ib.*

XVII. *Injuries not before provided for, injuries exceeding the amount of £5, 791.*

- must be done on one occasion, *ib.*
- persons may be committed or fined and compelled to pay compensation, *ib.*
- application of the money, *ib.*
- not to extend to certain cases, 792.
- bona fides* of claim of right, *ib.*
- person convicted though charged under sect. 10, *ib.*
- actual damage must be done, *ib.*
- preceding section to extend to trees, *ib.*

XVIII. *Making Gunpowder, to Commit Offences and Searching for the same.*

- making, etc., gunpowder, etc., with intent to commit a felony, 792.
- search-warrants, *ib.*

XIX. *General Clauses of Act.*

- principals in the second degree and accessories, 793.
- abettors in misdemeanours, *ib.*
- apprehension of suspected persons, *ib.*
- malice against owner unnecessary, *ib.*
- offender in possession of the property injured, 794.
- intent to injure particular person, *ib.*

MALICIOUS INJURIES, etc.—*continued.*XIX. *General Clauses of Act—continued.*

- apprehension of persons found committing offence, 794.
- at night, *ib.*
- "owner of property or his servant," *ib.*
- mode of compelling appearance of persons punishable on summary conviction, *ib.*
- abettors in offences punishable on summary conviction, 795.
- application of forfeitures and penalties on summary conviction, *ib.*
- proviso as to several persons joining in offence, *ib.*
- parties aggrieved to receive compensation though examined as witnesses, *ib.*
- justices may commit on non-payment, *ib.*
- may discharge the offender, *ib.*
- summary conviction a bar, 796.
- appeal, *ib.*
- no *certiorari*, etc., *ib.*
- convictions returned to quarter sessions, 797.
- evidence in future cases, *ib.*
- venue, *ib.*
- notice of action, *ib.*
- general issue, etc., *ib.*
- admiralty jurisdiction, *ib.*
- finer and sureties for keeping the peace, *ib.*
- hard labour, 798.
- solitary confinement and whipping, *ib.*
- summary proceedings in England and Ireland, *ib.*
- except in London and the metropolitan police district, *ib.*
- costs in misdemeanours, *ib.*
- extent of Act, *ib.*
- commencement of Act, *ib.*

XX. *Forms, 799–808.*

MANDAMUS.

I. *Nature of Writ, and when it lies, in General, Proceedings on, and Costs.*

- nature of writ, and when it lies, etc., 808.
- will not lie to the crown, *ib.*
- in discretion of Court to grant, 809.
- granted where no other remedy, *ib.*
- to admit, etc., to an office, *ib.*
- where right doubtful, *ib.*
- where matter in dispute too trifling, *ib.*
- where *certiorari* taken away, 810.
- where a *quo warranto*, etc., *ib.*
- where merely to obtain opinion of Court, *ib.*
- must be a refusal to act by party against whom mandamus applied for, *ib.*
- time of application for, *ib.*
- affidavit for, *ib.*
- rule nisi, *ib.*
- mandamus, *ib.*
- return, 811.
- peremptory mandamus, *ib.*
- attachment for non-return, *ib.*
- false return, or insufficient return, *ib.*

MANDAMUS—*continued.*I. *Nature of Writ, etc.—continued.*

as soon as return made, prosecutor in such writ may plead, etc., 811.
to which person returning may reply, *ib.*
how the proceedings shall be, *ib.*
persons against whom damages shall be recovered, not liable to be sued in other actions, *ib.*
Court may allow time to return a mandamus, plead, reply; etc., *ib.*
the 4 Anne, c. 16, and all statutes of *jeofayles*, extended to mandamus, etc., *ib.*
the 9 Anne, c. 20, extended to all writs of mandamus, 812.
damages and costs, *ib.*
for protection of certain officers to whom mandamus are directed, *ib.*
proceedings not to abate by removal of officer, *ib.*
costs to be in the discretion of the Court, 813.
decisions as to costs, *ib.*
mode of obtaining, *ib.*
affidavit for, 814.
when ordered against particular parties, *ib.*
amount of costs, *ib.*
security for costs, *ib.*

II. *Concerning Justices of the Peace, Sessions, etc., in general, see JUSTICES OF THE PEACE, 150.*
mandamus to sessions, etc., 814.
magistrates' clerk, 815.III. *Concerning Overseers and Guardians, and concerning Poor, and Parish Matters.*

appointment, etc., of overseers, etc., 815.
to restore, *ib.*
clerk or treasurer to guardians, *ib.*
poor and other rates, *ib.*
enforcing payment of rates, 817.
overseers' accounts, *ib.*
removal of pauper, 819.
order of maintenance, *ib.*
in bastardy cases, *ib.*
vagrants, *ib.*
inspection of book, etc., 819. See INSPECTION, 56.

IV. *Concerning Churchwardens, Churches, Church-rates, and Meeting Houses.*

churchwardens, 820.
church and other rates, *ib.*
parish clerk, 821.
vestry clerk, etc., *ib.*
clerk to turnpike roads, *ib.*
burial, *ib.*
keys of church, *ib.*
dissenting meeting-house, *ib.*

V. *Concerning Gaolers and Constables.*

to appoint a high constable, 821.
to compel a constable to pay money levied, *ib.*

MANDAMUS—*continued.*V. *Concerning Gaolers, etc.—continued.*

to a gaoler to give up a dead body, 821.
to award compensation in lieu of gaol fees, 822.

VI. *Concerning County Treasurers and others.*

county treasurer, 822.
to inspect county rates, etc., *ib.*
to deposit with clerk of peace books of expenditure, etc., 823.
to registrar of births, etc., *ib.*
to repair a road, *ib.*
clerk to trustees under turnpike Acts, *ib.*
to an inn of Court to admit, *ib.*
other cases, *ib.*
to corporations, *ib.*

MANOR. See COPYHOLD.

what evidence of a manor, 823.
proof by rolls of, *ib.*
manorial game rights.
The 4 & 5 Vict. c. 35, 823.
commutation of manorial rights, etc., *ib.*
general expenses, *ib.*
action for expenses, 824.
expenses of trustees, *ib.*
false evidence to be deemed perjury, 825.
withholding evidence a misdemeanour, *ib.*
limitation of actions against commissioners, justices, etc., *ib.*
proceedings under this Act not to be quashed for want of form, *ib.*
nor removed by certiorari, *ib.*

MANUFACTURES.

stealing from and injuring. See LARCENY, and MALICIOUS INJURIES TO PROPERTY.

MARINES, 944. See MILITARY LAW.

MARKETS AND FAIRS.

extent of Act, 826.
interpretation clauses, 826, 827.
short title of this Act, 827.
form in which portions of this Act may be incorporated with other Acts 828.

Construction of Market or Fair.

construction of markets or fairs to be subject to the provisions of this Act and one of the "Lands Clauses Consolidation Acts, 1845," 828.

errors and omissions in special Act or schedules thereto, may be corrected by justices, etc., who shall certify the same, *ib.*

certificate to be deposited, *ib.*

copies of alterations, etc., to be evidence, *ib.*

additional land may be taken for extraordinary purposes, 829.

undertakers subject to provisions of this

MARKETS AND FAIRS—*continued.**Construction of Market or Fair—continued.*

and special Act, may execute the works herein named, 829.
undertakers to make satisfaction for damage done, *ib.*

Holding of Market, etc.

before the market or fair shall be opened, notice to be given by undertakers, 829.
sales elsewhere than in markets prohibited under a penalty not exceeding 40s., *ib.*
market days, 830.
penalty for selling or exposing for sale unwholesome meat, etc., *ib.*
penalty for obstructing inspector, *ib.*
penalty for obstructing market or fair keeper, *ib.*

Slaughter-houses.

power to erect slaughter-houses, if authorized by special Act, 830.
nothing to protect undertakers from an indictment for nuisance, *ib.*
penalty on slaughtering cattle, etc., elsewhere than in an authorized slaughter-house, 831.
inspector may enter and inspect slaughter-houses, *ib.*

Weighing of Goods and Carts.

undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs, 831.
articles to be weighed if requested by the buyer, *ib.*
penalty for refusal, *ib.*
penalty on persons appointed refusing to weigh, *ib.*
undertakers to keep proper machines for weighing carts laden with goods, *ib.*
carts to be weighed at one of the machines erected by the undertakers, 832.
penalty on drivers for refusing to take carts to be weighed, etc., *ib.*
penalties on drivers of carts, etc., committing frauds in weighing, *ib.*
penalty on buyers or sellers for committing frauds in weighing, *ib.*
penalties for frauds committed by the machine keeper, *ib.*
penalty on other parties committing frauds as to weighing, 833.

Tolls.

tolls, etc., not to be demanded until market or fair be completed, 833.
certificates of two justices to be evidence that market or fair is completed, *ib.*
stallages, etc., when to be paid, *ib.*
tolls to be paid to persons authorized before the same are weighed, *ib.*
tolls in respect of cattle market, when due, *ib.*

MARKETS AND FAIRS—*continued.**Tolls—continued.*

stallages, tolls, etc., may be varied from time to time, 834.
penalty on taking a greater toll than authorized by this or the special Act, *ib.*
recovery of tolls by distress, *ib.*
disputes respecting tolls, how to be settled, *ib.*
penalty for obstructing collector of rents, etc., *ib.*
list of tolls, etc., to be set up and placed in conspicuous places, *ib.*

Bye-laws.

bye-laws may be made for all or any of the purposes herein named, 834.
bye-laws may be repealed or altered from time to time, 835.
bye-laws may be enforced by imposition of penalties, *ib.*
no bye-laws to come into operation until allowed in the manner prescribed and approved by secretary of state, *ib.*
notice of allowance of bye-laws to be given in one or more newspapers, etc., *ib.*
a copy of proposed bye-laws to be open to inspection, *ib.*
publication of bye-laws, 836.
bye-laws to be binding on all parties, *ib.*
proof of publication of bye-laws, *ib.*

Accounts.

annual account to be made up by the undertakers, and transmitted, etc., and to be open for inspection, 836.
penalty on omission to prepare such account, *ib.*
tender of amends, *ib.*

Recovery of Damages and Penalties.

"Railways Clauses Consolidation Acts, 1845," as to damages, etc., to be incorporated, 837.
nothing in this or the special Act to affect the rights of the crown, *ib.*
all things in certain cases may be done by one justice, and in Scotland by the sheriff, etc., *ib.*
penalties, etc., imposed in respect of any offence committed within the metropolitan police district, to be paid to the receiver, and applied under 2 & 3 Vict. c. 71, *ib.*
perjury, 838.

Access to Special Act.

copies of special Act to be kept by undertakers at their office, and deposited with the clerks of the peace, etc., and be open to inspection, 838.
penalty on undertakers failing to keep or deposit such copies, *ib.*
short title, *ib.*
interpretation, *ib.*

MARKETS AND FAIRS—*continued.**Access to Special Act—continued.*

- secretary of state to have power to alter days for fairs, on representation made to him, 838.
- notice of representation to be published in certain newspapers, *ib.*
- order of secretary of state to be published in certain newspapers, *ib.*
- all rights of owner to remain good, 839.

MARRIAGE.

proof of marriage, 385, 388.

I. *Of Marriages Solemnized by Banns or Licence, other than a Registrar's Certificate, etc., under the 6 & 7 Will. 4, c. 85.*

- meaning of term "bann," 839.
- licence, what, *ib.*
- special licence, *ib.*
- whether action lies against clergyman for not marrying, *ib.*
- The 4 Geo. 4, c. 76.*
- repeal of prior Acts, 840.
- banns, where, when, and how published ; and marriage to be solemnized where banns published, 841.
- bishop, with consent of patron and incumbent, may authorize publication of banns in public chapel, *ib.*
- consent, etc., to be registered, *ib.*
- notice to be placed in such chapel, *ib.*
- provisions relative to marriage registers extended to such chapels, *ib.*
- book to be provided for registration of banns, etc., *ib.*
- notice of names and place, etc., of abode of parties, to be given to minister seven days before publication of banns, *ib.*
- marriage void by publication of banns in wrong name, *ib. n. (a).*
- ministers not punishable for marrying minors without consent of parents, etc., unless with notice of dissent, 843.
- if dissent publicly declared, publication of banns void, *ib.*
- republishing of banns necessary, if marriage not solemnized in three months, *ib.*
- licences to be granted to marry in church, etc., of such parish only wherein one of parties resided for fifteen days before, *ib.*
- where caveat entered, no licence to issue till matter examined by judge, 844.
- parishes, where no church or chapel, and extra-parochial places, deemed to belong to adjoining parish, etc., 844.
- where churches demolished, or under repair, banns to be proclaimed in a church, etc., of adjoining parish, etc., *ib.*
- oath to be taken before surrogate, before licence is granted, *ib.*

MARRIAGES—*continued.*I. *Marriages by Banns, etc.—continued.*

- bond not to be required before granting licence, 845.
- who are to give consent, if parties under age, *ib.*
- if father of minor be *non compos*, 846.
- or if guardians or mother of minor be *non compos*, *ib.*
- or beyond sea, etc., parties may apply to Lord Chancellor, *ib.*
- surrogate to take oath of office, *ib.*
- if marriages by licence be not solemnized within three months, new licence to be obtained, *ib.*
- right of archbishop of Canterbury to grant special licences, *ib.*
- persons solemnizing marriages in any place other than a church or chapel, *ib.*
- or without banns or licence, *ib.*
- or under pretence of being in holy orders, shall be transported, *ib.*
- prosecution to be in three years, 847.
- marriages void where persons wilfully marry in any place other than a church, etc., without banns or licence, *ib.*
- when marriage solemnized between minors, by false oath or fraud, guilty party to forfeit property accruing from the marriage, *ib.*
- proviso, 848.
- previous agreements to be void, *ib.*
- information to be filed within one year, *ib.*
- proof of actual residence of parties not necessary to validity of marriage, 849.
- no suit to compel celebration of marriage by reason of contract of marriage, *ib.*
- marriages to be in presence of two witnesses, *ib.*
- registration, etc., of, *ib.*
- forgery, *ib.*
- Act not to affect royal family, *ib.*
- Act not to extend to Quakers and Jews, *ib.*
- two printed copies of Act to be sent to clergyman, of which one to be kept in parish chest, 850.
- The 5 Geo. 4, c. 32, ib.*
- validity of marriages in certain places, etc., where churches under repair, etc., not to be questioned, *ib.*
- licences for marriages in churches, etc., extend to any place within the parish, licensed for performance of divine service while church is repairing, etc., *ib.*
- banns and marriages solemnized in such places, to be considered as done in parish church, *ib.*
- The 11 Geo. 4 & 1 Will. 4, c. 18, 851.*
- validity of marriages solemnized under certain circumstances not to be questioned, *ib.*
- while church, etc., under repair, bishop may direct banns to be published in consecrated chapel or parish, *ib.*

MARRIAGES—*continued.*

- I. *Marriages by Banns, etc.—continued.*
 for removing doubts as to marriages solemnized in churches made and constituted under Acts 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134, 852.
 validity of marriages solemnized in certain chapels not to be questioned, *ib.*
 nor marriages solemnized in chapels, the consecration of which may be doubted, *ib.*
The 6 Geo. 4, c. 92, ib.
 in what case marriages herein mentioned good in law, 853.
 marriages in future solemnized in such churches, etc., valid, *ib.*
 registers of such marriages evidence, *ib.*
 proviso as to evidence, *ib.*
 registers of marriages solemnized in chapels where banns had not been usually published before 26 Geo. 2 to be removed to parish church, *ib.*
 forgery, *ib.*
The 5 & 6 Will. 4, c. 54, ib.
 marriages before passing of this Act of persons within prohibited degrees not to be annulled, 854.
 marriages of persons within prohibited degrees hereafter to be absolutely void, *ib.*
 not to extend to Scotland, *ib.*
 cases decided upon the statute, *ib.*
 where a district assigned under the 1 & 2 Will. 4, c. 38, the church building commissioners, or the bishop, to decide as to banns and marriages, 855.
 proceedings where determined that banns may be published and marriages solemnized, *ib.*
 how fees to be disposed of, *ib.*
 validity of marriages in chapels with districts assigned, 856.
 omission to authorize marriage cured by supplemental order, *ib.*
 number of section of Act only need be cited in any representation to the Queen in Council, etc., *ib.*
 order in Council to be inserted in 'London Gazette,' *ib.*
 map and description, 857.
 map not enrolled in chancery, *ib.*
 not to affect the licensing of churches, etc., for marriages, *ib.*
 legality of marriages, *ib.*
 banns and marriages in extra-parochial places, *ib.*
 registers in extra-parochial church or chapel, *ib.*
 marriages in extra-parochial places where both parties, or either, are resident there, 858.
 validity of marriages already solemnized in churches, etc., not legally authorized, *ib.*

MARRIAGES—*continued.*

- II. *Of Marriages Solemnized under a Registrar's Certificate, etc., under the 6 & 7 Will. 4, c. 85, 858.*
The 6 & 7 Will. 4, c. 85, ib.
 after 1st March, 1837, all rules prescribed by rubric to continue to be observed, *ib.*
 marriages may be solemnized on production of registrar's certificate, *ib.*
 marriages of Quakers and Jews, 859.
 superintendent registrar of births to be registrar of marriages, *ib.*
 notice of intended marriage to be given to registrar of district, *ib.*
 superintendent registrar to keep notices in a book, 860.
 after seven days, or twenty-one days, certificate of notice to be given on demand, *ib.*
 forms of certificates to be furnished, *ib.*
 certificates for marriages by licence to be distinguishable from other certificates, *ib.*
 issue of superintendent registrar's certificate may be forbidden, 861.
 consent, *ib.*
 superintendent registrar may grant licences for marriage, *ib.*
 superintendent registrar to give security, *ib.*
 certificate to be given before licence is granted, *ib.*
 caveat may be lodged with superintendent registrar against grant of licence or certificate, 862.
 marriages not to be solemnized until after twenty-one days after entry of notice, *ib.*
 unless by licence, *ib.*
 new notice required after three months, *ib.*
 superintendent registrar's certificate or licence to be given to the person by or before whom marriage is solemnized, 863.
 superintendent registrar may appoint registrars of marriages, *ib.*
 places of worship may be registered for solemnizing marriages therein, *ib.*
 on removal of same congregation the new place of worship may be immediately registered instead of one disused, *ib.*
 marriages may be solemnized in such registered places, in presence of some registrar and two witnesses, 864.
 marriages may be celebrated before superintendent registrar, *ib.*
 marriage fees to the registrar, 865.
 registrar to register all marriages solemnized before him in books to be sent by registrar general, *ib.*
 copies of marriage register book to be given quarterly to superintendent registrar, *ib.*
 proof of residence of parties, or consent, not necessary to establish the marriage, *ib.*

MARRIAGES—*continued.*

- II. *Marriages under Registrar's Cert.—cont.*
 bishops, with consent of patrons, may license chapels for solemnization of marriages in populous places, 865.
 appropriation of fees on marriages performed in such chapels, 866.
 patron or incumbent may appeal to the archbishop against such licences, *ib.*
 notice of such licences to be affixed in chapels, *ib.*
 marriages performed in such chapels to be under same regulations as those performed in parish churches, 867.
 option to parties to be married at parish church, *ib.*
 bishop, with consent of archbishop, may revoke such licences, *ib.*
 in which case registers to be sent to incumbent of parish church, *ib.*
 registrars of dioceses to send to register office, yearly, lists of licensed chapels within districts, *ib.*
 list of all chapels and buildings registered to be printed, 868.
 marriages under this Act cognizable, *ib.*
 registrar may ask certain particulars of parties, *ib.*
 persons vexatiously entering caveat liable to costs and damages, *ib.*
 persons making false declarations, etc., guilty of perjury, *ib.*
 persons unduly solemnizing marriage guilty of felony, *ib.*
 superintendent registrars unduly issuing certificates guilty of felony, *ib.*
 limitation of prosecution, 869.
 marriages void if unduly solemnized with knowledge of both parties, *ib.*
 in cases of fraudulent marriages, guilty party to forfeit property accruing from marriage, as in 4 Geo. 4, c. 76, *ib.*
 provisions of registry Act extended to this Act, *ib.*
 to extend to England only, *ib.*
 royal family exempt, *ib.*
The 1 Vict. c. 22, ib.
 meaning of the words notice to registrar and registrar's certificate, 870.
 certificate of baptismal name to be made by registrar or superintendent registrar, as case may be, *ib.*
 superintendent registrars unduly issuing licences, or solemnizing marriages, guilty of felony, *ib.*
 registrar-general's certificate of frivolous caveat to be evidence, *ib.*
 privilege of franking extended to United Kingdom, *ib.*
 registrar-general may appoint assistant to act for him in certain cases, *ib.*
 superintendent registrar may appoint deputy to act for him in certain cases, 871.

MARRIAGES—*continued.*

- II. *Marriages under Registrar's Cert.—cont.*
 registrar-general to limit number of registrars of marriage, 871.
 provision for marriages in Welsh tongue, *ib.*
 notices of marriage to be suspended in superintendent registrar's office, instead of being read at meetings of guardians, and particulars of same sent to registrar, *ib.*
 certified copies of register books to be made up quarterly, 872.
 clergyman to be paid for making register in duplicate, *ib.*
 penalty for not sending certified copies of register books, *ib.*
 certificates, etc., required to be given to superintendent registrar may be given to any registrar, who is to forward same, etc., *ib.*
 authority for administering oaths, 873.
 limitation as to summary convictions, *ib.*
 stamp duty not payable on licensing chapels for marriages, *ib.*
 banns may be published in chapels where marriages may be solemnized, *ib.*
 marriages may be in licensed chapels, though only one of parties resident in district, *ib.*
 publication of banns where they reside in different districts, *ib.*
 building used as a Roman Catholic chapel for one year may be registered for celebration of marriages, *ib.*
 notice to registrar, and issue of certificate by him to be used, etc., instead of banns, *ib.*
The 3 & 4 Vict. c. 72, 874.
 certificate of notice not to be granted for marriage out of district where parties dwell, except as hereinafter enacted, *ib.*
 in what case marriage may be solemnized out of district in which parties dwell, *ib.*
 form of notice, 875.
 persons making false declarations guilty of perjury, *ib.*
 provision as to marriages of members of Society of Friends, and Jews, *ib.*
The 19 & 20 Vict. c. 119, ib.
 no notice of marriage to be read, etc., before guardians or transmitted to clerk, *ib.*
 every notice to be given with a solemn declaration, etc., *ib.*
 perjury, 876.
 form of notice of marriage, *ib.*
 notice without licence to be affixed in superintendent registrar's office, *ib.*
 notice by licence not to be suspended in office, 877.
 notice to be given to superintendent registrar for one district, *ib.*

MARRIAGES—*continued.*

- II. *Marriages under Registrar's Cert.*—*cont.*
 notice without licence given in Ireland if one party resides there, 877.
 certificate of proclamation of banns in Scotland as to party resident there, equivalent to superintendent registrar's certificate, 878.
 marriage by licence, certificate of notice by superintendent registrar, *ib.*
 unless marriage forbidden, *ib.*
 form of licence, *ib.*
 solemnizing marriages in registered buildings, *ib.*
 persons may add religious ceremony of their persuasion, 879.
 superintendent registrar may grant licence where neither of the parties reside, *ib.*
 or in usual place of worship out of the district where parties reside, *ib.*
 registrar-general may appoint registrars, 880.
 registrar may appoint a deputy, *ib.*
 proof of observance of Act not necessary to validity of marriages, *ib.*
 penalty for false declarations or false notices, *ib.*
 fraudulent marriages, guilty party to forfeit property, 881.
 nothing to alter provisions of existing Acts, *ib.*
 marriages of Quakers or Jews solemnized by licence, *ib.*
 registrar-general to furnish registers, etc., to secretary of synagogue, *ib.*
 marriages under the Act good and cognizable, 882.
 registrar-general to allow searches to be made, etc., of returns of certified places of worship, etc., on payment of fees, *ib.*
 extent of Act, *ib.*
 commencement of Act, *ib.*
 schedules to the Act, 882-885.

MARSH.

- destroying banks of rivers, etc.
 See MALICIOUS INJURIES TO PROPERTY

MEDICAL PRACTITIONERS.

- The 21 & 22 Vict. c. 90*, 885.
 General Council of Medical Education and Registration, *ib.*
 registrar to keep register of medical practitioners, *ib.*
 powers of privy council, *ib.*
 registrar to publish register of name in *Medical Register*, 886.
 copy to be evidence, etc., *ib.*
 erasing name for misconduct, etc., *ib.*
 exemption from serving on juries, etc., *ib.*
 no person to hold any appointment as physician, etc., unless registered, *ib.*
 no certificate, etc., to be valid unless person signing it is registered, 887.
 falsification of register by registrar, *ib.*

MEDICAL PRACTITIONERS—*continued.*

- persons making false representations to procure themselves to be registered, etc., 887.
 falsely pretending to be a physician, etc., *ib.*
 recovery of penalties, *ib.*
 medical officer under order of Poor Law Board, etc., to be disqualified if registered before 1861, 888.
mala praxis, ib.
 master, wardens, etc., empowered to enter shops of apothecaries, etc., and examine drugs, etc., *ib.*
 penalties, 889.
 penalty on apothecaries refusing to compound, or unfaithfully compounding, medicines prescribed, *ib.*
 persons not to practise as apothecaries, etc., without due examination, *ib.*
 proviso, 890.
 penalty for acting without a certificate, *ib.*
 what a practising, *ib.*
 proof of exemption, *ib.*
 application of moneys arising from penalties, 891.
 recovery of fines and penalties, *ib.*
 distress not unlawful for want of form, 892.
 party not a trespasser *ab initio, ib.*
 penalty on wilful falsification of registrar, *ib.*
 II. *Chemists and Druggists.*
 penalty for fraudulently procuring a certificate, 892.
 penalty on wilful falsification by registrar, or for obtaining registration by false representation, *ib.*

MEDICINES. See MEDICAL PRACTITIONERS.

- refusing to make up medicines, etc., 893.
 duties on, *ib.*
 vending medicines without paper cover provided by commissioners of stamps, *ib.*
 victuallers, etc., not required to take out licence, who shall sell the artificial or other waters mentioned in schedule, and which shall be drunk in their houses, 894.
 licence for selling medicines, etc., *ib.*
 penalty for selling without licence, *ib.*
 duties payable before drugs, etc., are exposed to sale, etc., *ib.*
 exceptions as to, *ib.*
 drugs sold entire by regular surgeons, etc., *ib.*
 mixtures, qualities whereof are known, *ib.*
 vendors to apply to commissioners for covers, 895.
 and deliver their name and residence in writing, *ib.*
 covers to be marked with duties, and affixed to medicines before sale, *ib.*

MEDICINES—*continued*.

- allowance for prompt payment, 895.
- penalty on persons receiving articles without labels, and not returning them, etc., *ib.*
- penalty on persons vending medicines without labels, *ib.*
- persons fraudulently using covers, 896.
- on outside of parcels containing twelve inclosures shall be written "Medicines," etc., *ib.*
- officers may open suspected parcels, and seize articles not labelled, *ib.*
- covers defaced in affixing them on articles, may be returned to, and replaced at stamp office, *ib.*
- notice to be given of place of making or vending medicines, 897.
- to what medicines this Act shall extend, *ib.*
- penalties, how to be recovered, *ib.*
- appeal, *ib.*
- witnesses not appearing, *ib.*
- conviction, *ib.*
- application of penalties, *ib.*
- no action or proceeding unless in name of attorney-general, *ib.*
- or some one appointed by commissioners of stamps, 898.
- limitation of actions, *ib.*
- penalties may be mitigated, *ib.*

MEMBERS OF PARLIAMENT. See PARLIAMENT, PEERS.

MENACES. See LARCENY and MALICIOUS INJURIES TO PROPERTY.

MERCHANDISE MARKS.

- The "Merchandise Marks Act, 1862,"* 898.
- construction of words, *ib.*
- forging a trade mark or falsely applying any trade mark with intent to defraud, a misdemeanour, 899.
- applying a forged trade mark to any vessel, etc., in which any article is sold, a misdemeanour, *ib.*
- selling articles with forged or false trade marks, 900.
- penalty, *ib.*
- additions to and alterations of trade marks made with intent to defraud, to be deemed forgeries, *ib.*
- any person who shall have sold an article having a false trade mark, to be bound to give information where he procured it, *ib.*
- power to justices to summon persons refusing to give information, *ib.*
- penalty for refusing, 901.
- marking any false indication of quantity, etc., upon any article with intent to defraud, *ib.*
- penalty, *ib.*
- selling or exposing for sale articles with false statement of quantities, etc., *ib.*

MERCHANDISE MARKS—*continued*.

- penalty, 901.
- proviso that it shall not be an offence to apply names or words known to be used for indicating particular classes of manufactures, *ib.*
- description of trade marks and forged trade marks in indictments, etc., 902.
- conviction not to affect any civil right or remedy, *ib.*
- intent to defraud, etc., any particular person need not be alleged in an indictment, etc., or proved, *ib.*
- persons who aid in the commission of a misdemeanour to be also guilty, *ib.*
- punishment for misdemeanour under this Act, *ib.*
- recovery of penalties, *ib.*
- summary proceedings before justices to be within 11 & 12 Vict. c. 43, 903.
- limitations of actions, etc., *ib.*
- vendor of an article with a trade mark to be deemed to contract that the mark is genuine, *ib.*
- vendor of an article with description upon it of its quantity to be deemed to contract that the description was true, *ib.*
- Act not to affect the corporation of cutlers of Hallamshire, nor to repeal 59 Geo. 3, c. 7, *ib.*
- short title, *ib.*

MERCHANTS.

- embezzlements by, 265.

METALS.

- stealing of, 243.
- The "Old Metal Dealers Act, 1861,"* 904.
- commencement of Act, *ib.*
- definition of terms, *ib.*
- penalty on dealer of old metals being in possession of stolen property, *ib.*
- justices may order dealers to be registered, *ib.*
- dealer to give notice of change of place of business, 905.
- inspectors and sergeants of police to visit places of business of registered dealers in old metals, *ib.*
- regulations to be observed by registered dealers in old metals, *ib.*
- recovery of penalties, 906.
- application of penalties, 907.
- appeal in certain cases, *ib.*
- limit of Act, *ib.*
- schedule, 907, 908.

MILITARY LAW.

- preliminary observations, 908.

I. *The Regular Soldiers.*

- Postage of letters of soldiers. See POST OFFICE.

(1.) *The Mutiny Act.*

- execution of sentences of penal servitude, 910.

MILITARY LAW—*continued.*I. *The Regular Soldiers—continued.*

apprehension of deserters, 911.
 temporary custody of deserters in gaols, *ib.*
 desertion of recruit before joining, 912.
 fraudulent confession of desertion, *ib.*
 furlough in case of sickness, *ib.*
 no person acquitted or convicted by magistrate or jury to be tried by court-martial for same offence, 913.
 soldiers liable to be taken out of her Majesty's service only for felony, misdemeanour, or for debts amounting to £30 and upwards, *ib.*
 soldiers not liable to be taken out of her Majesty's service for debts under £30, or for not maintaining their families, or for breach of contract, 913.
 officers not to be sheriffs or mayors, etc., 914.
 questions to be put to recruits on enlisting, *ib.*
 recruits, when deemed to be enlisted, *ib.*
 when recruits to be taken before a justice, *ib.*
 dissent and relief from enlistment, *ib.*
 enlistment for particular branch or arm of or for general service, 915.
 attesting of recruits, *ib.*
 recruits, until they have been attested or received pay, not triable by court-martial, but in certain cases punishable as rogues and vagabonds, *ib.*
 attested recruits triable in some cases either before two justices or before a court-martial, 916.
 recruits absconding, *ib.*
 re-engagement of soldiers for a further term, *ib.*
 boon service to be reckoned, *ib.*
 apprentice enlisting to be liable to serve after the expiration of his apprenticeship, 917.
 claims of masters to apprentices, *ib.*
 punishment of apprentices enlisting, *ib.*
 how and where troops may be billeted, 918.
 billeting the guards in and near Westminster, 919.
 military officers not to act as justices in billeting, 920.
 allowance to innkeepers, *ib.*
 interpretation of Act, *ib.*
 powers and regulations as to billets, 921.
 exemptions from billets, *ib.*
 supply of carriages, *ib.*
 rates to be paid for carriages, and regulations relating thereto, 922.
 as to supply of carriages in cases of emergency, etc., 923.
 justices empowered to reimburse constables for sums expended by them, 923.
 routes in Ireland, 924.

MILITARY LAW—*continued.*I. *The Regular Soldiers—continued.*

tolls, 924.
 ordinary course of criminal justice not to be interfered with, *ib.*
 punishment of officers obstructing civil justice, *ib.*
 penalty for procuring false musters, *ib.*
 for unlawful recruiting, 925.
 for inducing soldiers to desert, *ib.*
 for forcible entry in pursuit of deserters without warrant, *ib.*
 for aiding escape or attempting to escape of prisoners, and for breach of prison regulations, *ib.*
 certain provisions of Acts for regulating gaols to apply to military prisons, 926.
 penalty on keepers of prisons for refusing to confine, etc., military offenders, *ib.*
 on purchasing soldiers' necessaries, stores, etc., *ib.*
 on civil subjects offending against the laws relating to billets, 927.
 on toll collectors demanding toll from officers, soldiers, or carriages, 928.
 on persons personating soldiers, etc., *ib.*
 on the military offending against the laws relating to billets, *ib.*
 on killing game without leave, 929.
 recovery of penalties, *ib.*
 appropriation of penalties, *ib.*
 mode of recording a soldier's settlement, 930.
 licences of canteens, *ib.*
 commissaries, etc., to attest their accounts, *ib.*
 administration of oaths, *ib.*
 perjury, *ib.*
 offences against former Mutiny Acts and articles of war, 931.
 schedules of forms, 931–938.
 (2.) *Personating Pensioners, Forgery, etc.*
 the personating of pensioners, 938.
 forging documents, 939.
 knowingly uttering such forgeries, *ib.*
 punishment, *ib.*
 forging certificates, etc., felony, *ib.*
 persons entitled to half pay, pensions, or allowances, may receive the same by remittance bills, 940.
 party to whom remittance bills are payable to appear personally, *ib.*
 power to inquire into the identity of parties, and to administer oaths, *ib.*
 penalty for perjury, *ib.*
 penalty for frauds respecting pensions, *ib.*
 repayment to parishes of relief given to out-pensioners, *ib.*
 as to care of lunatic pensioners, 941.
 penalty for damaging or selling or purchasing accoutrements, etc., *ib.*
 punishment of personation and forgery, *ib.*

MILITARY LAW—continued.

I. *The Regular Soldiers—continued.*(3.) *Relief from the Penalties of the Vagrant Acts.*

every soldier or sailor on carrying his discharge, within three days, to the nearest chief magistrate, shall receive a certificate of his settlement, on producing which, being in his route, he shall not for asking relief be deemed a vagabond, 943.

soldiers' wives not being permitted to embark with their husbands, shall receive from the nearest chief magistrate a like certificate, which shall entitle them to ask relief on their route, etc., *ib.*

new certificates in case of accident or sickness, 944.

passes from the admiralty or war office shall have the same effect as heretofore, *ib.*

II. *Royal Marine Forces whilst on Shore.*

marine forces whilst on shore, 944.

the ordinary course of law not to be interfered with, *ib.*

musters, and penalty on false musters, *ib.*

verifying of muster-rolls, 945.

apprehension of deserters, *ib.*

transfer of deserters, 946.

temporary custody of deserters in gaols, *ib.*

fraudulent confession of desertion, *ib.*

punishment for inducing marines to desert, 947.

extension of furlough in case of sickness, 948.

marines liable to be taken out of her Majesty's service only for felony and certain misdemeanours, or for debts amounting to £30 and upwards, *ib.*

not for debts under £30, or for not maintaining their families, or for breach of contract, *ib.*

officers not to be sheriffs, mayors, etc., 949.

questions to be put to recruits on enlisting, *ib.*

recruits, when deemed to be enlisted, *ib.*

when recruits to be taken before a magistrate, *ib.*

dissent and relief from enlistment, *ib.*

attesting of recruits, 950.

recruits until they have been attested or received pay not triable by court-martial, but in certain cases punishable as rogues and vagabonds, *ib.*

attested recruits triable in some cases either before two justices or before a court-martial, *ib.*

recruits absconding, 951.

apprentices enlisting liable to serve after the expiration of their apprenticeship, *ib.*

claims of masters to apprentices, *ib.*

no apprentice claimed by the master shall be taken away without a warrant, *ib.*

MILITARY LAW—continued.

II. *Royal Marine Forces, etc.—continued.*

punishment of apprentices enlisting, 952.

billeting of marines, *ib.*

allowance to innkeepers, 953.

supply of carriages, 954.

rates for carriages, 955.

as to supply of carriages, etc., in cases of emergency, 956.

justices of peace to direct payment of sums expended for carriages, etc., *ib.*

exemption from tolls, 957.

marching money on discharge, *ib.*

penalty upon civil subjects offending against the laws relating to billets and carriages, *ib.*

upon officers of marines so offending, 958.

for forcible entry in pursuit of deserters without a warrant, 959.

for purchasing clothes, etc., from any marine, *ib.*

on unlawful recruiting, 960.

on killing game without leave, *ib.*

recovery of penalties, *ib.*

appropriation of penalties, *ib.*

licences of canteens, 961.

mode of recording a marine's settlement, *ib.*

administration of oaths, *ib.*

perjury, *ib.*

definition of terms, *ib.*

marines not to be billeted in private houses, etc., 962.

forms, 962-965.

III. *The Militia.*

preliminary remarks, 965.

militia may be billeted in the beer-houses in which soldiers may be billeted, 966.

place for militia storehouse to be provided, *ib.*

storehouses to be exempt from local rates, *ib.*

sale of place which is not required, 967.

expense of storehouse, how to be provided for, *ib.*

power to borrow on mortgage of the county rates, *ib.*

justices to provide for interest on mortgages and repayment of principal, 968.

power to borrow, *ib.*

acts done and contracts made by deputy lieutenants shall be valid, *ib.*

powers given by this Act to extend to militia of the city of London, *ib.*

municipal boroughs exempt from county rate to contribute in due proportion, 969.

mode of assessing the proportions payable by the boroughs, *ib.*

manner in which the award is to be made, *ib.*

arbitration to be appointed in default of agreement, *ib.*

MILITARY LAW—continued.

III. *The Militia*—continued.

- vacancies in arbitrators to be supplied, 970.
- power to inspect rates, *ib.*
- penalty, *ib.*
- the borough treasurer to pay the sums awarded to the county treasurer, *ib.*
- borough may borrow money on mortgage, *ib.*
- how mortgages are to be made, *ib.*
- conveyances and other instruments exempt from stamp duty, *ib.*
- award may be revoked in certain events, 971.
- proportions contributable by franchises and places exempt from county rates, *ib.*
- permanent staff to be billeted, *ib.*
- punishment of men not attending, or absenting themselves during training and not taken till after, *ib.*
- provisions for apprehension of militiamen not attending or absenting themselves during training, 972.
- penalty for inducing militiamen to absent themselves, or harbouring or employing militiamen absenting themselves, *ib.*
- penalty for buying arms or militia stores, *ib.*
- recovery of penalties, *ib.*
- application of certain penalties, 973.
- application of penalties on militiamen, *ib.*
- short title, *ib.*
- interpretation, *ib.*
- schedules of forms, 973-975.
- The 18 & 19 Vict. c. 57*, 975.
- secretary of state may enlarge time for appointment of persons to apportion contribution between county and borough, and for making award, 975.
- where the poor-rate in the county and borough is not assessed upon a uniform principle, the proportions of contributions may be adjusted without regard to the poor-rate valuation, *ib.*
- boroughs situate in more than one county to contribute to each in proportion to the rateable value of the part within the same, 976.
- foregoing provisions to extend to franchises, *ib.*
- the word "borough" to include any city or town named in schedules (A.) and (B.) of 5 & 6 Will. 4, c. 76, although such should be a county of itself, *ib.*
- The 23 & 24 Vict. c. 94*, *ib.*
- appointment of committee for providing storehouses for united militia artillery corps in England, *ib.*
- meetings of committee, 977.
- powers of committee, *ib.*
- lands purchased for purposes of this Act to be conveyed to trustees, *ib.*

MILITARY LAW—continued.

III. *The Militia*—continued.

- as to payment of expenses incurred by committee, 977.
- provisions for storehouses for united militias, 978.
- payments to counties in respect of expenses of providing quarters for permanent staff, *ib.*
- provisions in respect of counties who have already provided accommodation for permanent staff, *ib.*
- treasurers of counties to be accountable to treasurers of boroughs for payment by secretary of state, *ib.*
- borough justices may administer oaths to militia volunteers, *ib.*
- so much of sect. 12 of 22 & 23 Vict. c. 38, as provides the modes in which deserters shall be tried, repealed, 979.
- deserters, etc., may be tried summarily by justices, unless secretary at war shall order otherwise, *ib.*
- provisions as to members of permanent staff, *ib.*
- arrest on criminal process, *ib.*
- IV. *Volunteers.*
- The "Volunteer Act, 1863," 979.*
- power for volunteer to quit his corps on condition herein stated, 980.
- vesting of property of corps in commanding officer *ex officio*, *ib.*
- appointment of storehouses for arms, *ib.*
- as to exemptions in 23 & 24 Vict. c. 139, *ib.*
- recovery of fines or subscriptions, 981.
- wrongful sale, non-delivery, etc., of public or corps property, *ib.*
- wrongful buying of arms, etc., from volunteers, *ib.*
- as to wilful injury to butts or targets, *ib.*
- power to corporations, justices, trustees, etc., to grant licences to use land, *ib.*
- power to justices to stop up or divert footpaths for purposes of this part of Act, 982.
- proceedings to be taken as directed by 5 & 6 Will. 4, c. 50, *ib.*
- power to secretary of state to make bye-laws, *ib.*
- horse duty, 983.
- penalty for giving false certificates, *ib.*
- volunteers not to lose interest in friendly or benefit societies, *ib.*
- tolls, *ib.*
- pecuniary penalties to be recovered summarily, *ib.*
- application of certain penalties, 985.
- interpretation of terms, *ib.*
- V. *Yeomanry.*
- no toll to be demanded from yeomanry going to exercise, 986.
- volunteers when assembled on invasion,

MILITARY LAW—*continued.*V. *Yeomanry—continued.*

- etc., to receive pay and be billeted as other forces, 986.
- while volunteers embodied, their families entitled to same relief as families of militiamen, *ib.*
- moneys advanced to such families to be repaid the overseers, *ib.*
- yeomanry at time of riots to be billeted, *ib.*
- officer's half-pay not forfeited on account of serving in yeomanry, *ib.*
- form of oath to be taken by such officer, *ib.*
- members not liable to serve as constables, *ib.*
- corps of cavalry desirous of assembling, the county lieutenant may make an order for that purpose, *ib.*
- may be billeted in same manner as regulars, 987.
- arms to be marked, *ib.*
- penalty for buying such arms or accoutrements, *ib.*
- subscriptions, arms, etc., vested in commanding officer, *ib.*
- if subscriptions or fines be not paid, a justice may direct double amount to be paid, which may be levied by distress, 988.
- justice may mitigate penalties, *ib.*
- penalty on persons refusing to give up arms, *ib.*

MILL.

- toll for grinding, 988.
- extortion of millers, 989.
- tenants may be bound to grind at lord's mill, *ib.*
- pulling down a mill, *ib.*
- adulterating meal or flour, *ib.*
- changing corn, *ib.*
- taking corn with intent to steal, *ib.*
- The 36 Geo. 3, c. 85, ib.*
- weights, etc., to be kept in mills, *ib.*
- provisions of 35 Geo. 3, c. 102, to extend to this Act, *ib.*
- millers to weigh corn, if required, before and after ground, 990.
- millers to deliver the whole produce of corn, when ground, if required, allowing for waste, and toll, etc., *ib.*
- where toll is taken, to be deducted from corn before put into mill, *ib.*
- no corn, but money, to be taken for toll, *ib.*
- exceptions, etc., *ib.*
- a table of prices to be put up, 991.
- private mills, *ib.*
- recovery and application of penalties, *ib.*
- appeal, *ib.*
- certiorari, ib.*
- limitation to informations, *ib.*
- conviction, 992.
- employment of children, etc., in, *ib.*

MINES.

- burning, etc., of, *ib.* See MALICIOUS INJURIES TO PROPERTY.
- stealing from, 242.
- malicious injuries to, 780.
- setting fire to coal mines, *ib.*

I. *Mines generally.*

- The 5 & 6 Vict. c. 99, 992.*
- females not to be employed in mines, etc., after periods herein mentioned, *ib.*
- indentures of apprenticeship of females to be void after periods herein mentioned, *ib.*
- males not to be employed in mines or collieries under ten years of age, etc., 993.
- appointment of inspectors of mines and collieries, *ib.*
- who shall report as directed, *ib.*
- no person to be apprenticed under ten years of age, nor for more than eight years, *ib.*
- indentures contrary to Act void; those in force void when apprentice attains eighteen years, *ib.*
- penalties for offences against this Act, *ib.*
- penalty on parents or guardians misrepresenting ages of persons employed, *ib.*
- not to affect persons employed above ground, 994.
- where there are vertical or other shafts, no steam or other engine to be under care of a person under the age of fifteen years, *ib.*
- who shall be deemed in charge of windlass worked by a horse, etc., *ib.*
- proprietors of mines, etc., not to pay wages at public-houses, etc., *ib.*
- wages so paid recoverable as if not paid, 995.
- penalty of £10 for paying wages at public-houses, etc., *ib.*
- agents may be summoned for acting contrary to, without knowledge of owners, *ib.*
- definition of terms "owner" and "agent," *ib.*
- summonses need not set forth names of all proprietors in cases of partnership, *ib.*
- service of summons on agent to be deemed good service, *ib.*
- recovery and application of penalties, *ib.*
- persons not paying penalties may be imprisoned, 996.
- inhabitants of parishes not incompetent as witnesses, *ib.*
- distress not unlawful for want of form, *ib.*
- appeal to quarter sessions, 997.
- convictions not removable by *certiorari, ib.*
- The 23 & 24 Vict. c. 151, ib.*
- no boy under twelve years of age to be employed in mines, *ib.*

MINES—*continued.*

- exception for boys between ten and twelve years of age who have certificates as to education and school attendance, 997.
- penalty on grant of false certificates, 998.
- recital of sect. 8 of 5 & 6 Vict. c. 99, *ib.*
- steam engines in certain cases not to be in charge of persons under eighteen, *ib.*
- foregoing provisions to be construed with 5 & 6 Vict. c. 99, *ib.*
- II. *Coal and Ironstone Mines.*
- 18 & 19 Vict. c. 108, repealed, 998.
- mines to which Part II. of this Act is to extend, *ib.*
- interpretation of terms, 999.
- power to secretary of state to appoint inspectors of mines, *ib.*
- no land agent or manager of mine to act as inspector, *ib.*
- general rules to be observed in coal and ironstone mines, *ib.*
- special rules to be also established, 1000.
- present special rules to continue in force, *ib.*
- new special rules how to be established, *ib.*
- special rules may be amended from time to time, 1002.
- publication of rules, *ib.*
- powers and duties of inspectors, 1003.
- inspector to give notice of causes of danger not provided for by rules, etc., *ib.*
- owners of mines to produce maps or plans of mines to inspector, 1004.
- inspector may require them to be made, *ib.*
- notice of accidents in mines to be given to secretary of state *ib.*
- provision for adjournment of inquests on deaths from accidents in mines in certain cases, *ib.*
- notice to be given to inspector of the abandonment and opening of mines, 1005.
- penalty for offences against this Act, *ib.*
- for obstructing inspectors, 1006.
- for defacing notices, *ib.*
- how recoverable, *ib.*
- certified copy of special rules to be evidence, *ib.*
- reports of inspectors to be laid before Parliament, *ib.*
- wages to be paid to person employed in mines or his representative in money, *ib.*
- where payment of person employed in mines is by weight, etc., an account may be taken, *ib.*
- extent of Act, 1007.
- commencement of Act, *ib.*
- The 25 & 26 Vict. c. 79, ib.*
- application of Act, *ib.*
- interpretation of terms, *ib.*
- prohibition of single shafts, *ib.*

MINES—*continued.*

- appeal by owner of existing mine to arbitration, 1007.
- mode of conducting arbitration, 1008.
- power to enforce by injunction compliance with Act, *ib.*
- agreements in contravention of Act illegal, *ib.*
- construction of Act, *ib.*

MISDEMEANOUR.

- what is a misdemeanour, 1008.
- attempts to commit, 1009.
- misdemeanour not merged in felony, *ib.*
- not acquitted of misdemeanour though facts amount to felony, *ib.*
- accessaries, *ib.*
- trial of, *ib.*
- judgment in, *ib.*
- compounding of, *ib.*

MISJOINDER.

- in indictment, 7, 8.

MISNOMER.

- in indictment, 22, 23.

MISPRISION OF FELONY.

- advertising rewards for recovery of stolen property, 287.

MISREPRESENTATIONS, 274. See LARCENY.

MITIGATION OF PUNISHMENT. See JUDGMENT, 58.

MONEY.

- how to describe it in indictment, etc., 32.

MORALITY. See LIBEL.

MURDER.

- attempts to commit. See MALICIOUS INJURIES TO PERSON.

MUTE.

- former punishment for, 1010.
- present laws as to, *ib.*
- plea of not guilty to be entered, *ib.*

MUTINY. See MILITARY LAW.

NAMES.

- statement of in indictment, 22–28.

NAVIGABLE RIVERS.

- stealing, etc., from, 254.

NAVY. See MILITARY LAW.

NECESSITY.

- stealing from no excuse, 223.

NEW TRIAL.

- in felonies, 1011.
- in misdemeanours, *ib.*
- venire facias de novo, *ib.*

NEW TRIAL—*continued.*

grounds of granting, 1011.
time for application, 1012.
several defendants, *ib.*
costs of, *ib.*

NEWSPAPERS AND PAMPHLETS, etc.

what quantity of paper to be deemed a sheet, 1013.
cover, etc., not deemed part of a pamphlet, *ib.*
publications at intervals exceeding twenty-six days, to be published on first day of month, *ib.*
or in two days before or after, *ib.*
price and day of publication to be printed on periodical publications, *ib.*
omitting same, selling, etc., *ib.*
proviso for allowance to distributors, etc., who buy to retail, *ib.*
such pamphlets freed from certain regulations, *ib.*
no person to print, etc., newspapers, etc., or pamphlets without entering into recognizance, *ib.*
or giving bond for securing fines upon conviction for libels, 1014.
if sureties pay any part of money for which they are bound, or become bankrupt, etc., new recognizance to be given, *ib.*
sureties may withdraw from recognizance, *ib.*
new recognizance to be entered into, *ib.*
bonds free from stamp duty, 1015.
lists of recognizances, etc., transmitted to commissioners of stamps, *ib.*
recognizance, in case of libel, to be of good behaviour, as well as to appear, *ib.*
recovery of penalties, *ib.*
proviso as to amount, *ib.*
two justices may determine offences, *ib.*
examination upon oath, 1016.
party not paying penalty, imprisonment, *ib.*
appeal, *ib.*
justices may mitigate penalties; allowing costs, *ib.*
persons summoned as witnesses not appearing, etc., *ib.*
form of conviction, *ib.*
no *certiorari*, etc., *ib.*
actions for penalties to be commenced in name of attorney-general, etc., or officer of stamps, *ib.*
proviso for Acts of Parliament, proclamations, orders of Council, etc., 1017.
The 6 & 7 Will. 4, c. 76, ib.
newspapers subject to the regulations of this Act, *ib.*
particulars to be printed on newspapers with supplements, 1017.
penalty for omission, *ib.*
penalty for publishing supplements without newspapers, 1018.

NEWSPAPERS, PAMPHLETS, etc.—*cont.*

no person to print or public a newspaper until declaration be delivered at stamp office, 1018.
fresh declaration to be made in certain cases, *ib.*
before whom declarations are to be made, 1019.
penalty if declaration be false, etc., *ib.*
penalty for printing, etc., a newspaper, such declaration not having been made, *ib.*
declarations to be filed, and certified copies to be admitted in evidence against persons making same, *ib.*
commissioners, etc., to deliver certified copies of declarations, and same to be received in evidence, *ib.*
after production of declaration, and a newspaper intituled as therein mentioned, it shall not be necessary to prove the purchase of the paper, 1020.
penalty on unauthorized persons giving certificates, and on commissioners or officers giving false certificates, *ib.*
service of process at place of printing or publishing mentioned in declaration deemed sufficient service, *ib.*
titles of newspapers and names of printers and publishers to be entered in a book, 1021.
persons to have liberty to inspect it, *ib.*
publishers, etc., of newspapers to give security for payment of duties on advertisements, *ib.*
penalty for neglect or refusal, *ib.*
printers, etc., who have made affidavits and given security before commencement of this Act not required to renew the time, except in cases mentioned, *ib.*
cases in which such affidavits and securities shall be renewed, *ib.*
copies of newspapers to be delivered to commissioners of stamps and taxes, *ib.*
ib.
may be produced in evidence, *ib.*
commissioners may allow printer to lodge his paper with any distributor, 1022.
name of printer and other particulars to be printed on newspapers, *ib.*
none but commissioners of stamps to supply paper stamped for newspapers without security, *ib.*
recovery of penalties, 1023.
no *essoign*, etc., *ib.*
application of penalties, *ib.*
mode of proceeding for recovery of penalties before justices, 1024.
appeal to sessions, *ib.*
persons convicted to give security on appeal, *ib.*
no *certiorari*, 1024.
justices may mitigate penalties, *ib.*
form of conviction, 1025.

NEWSPAPERS, PAMPHLETS, etc.—*cont.*

for compelling attendance of witnesses before justices, 1025.
 what good service of process, etc., *ib.*
 repeal of Acts and parts of Acts, and duties thereby granted, *ib.*
 schedule to the 6 & 7 Will. 4, c. 76, *ib.*
 duties and stamps on pamphlets, advertisements and newspapers, 1026.

NIGHT.

being found by night armed, 252.

NOBLEMEN. See PEERS.

NON-COMPOS. See LUNATICS.

NOTICE OF ACTION.

to justices, etc., 162.
 enactment as to uniformity of, 162.

NUISANCE, PUBLIC.

I. *What is, and who liable for.*

in general, 1027.
 difference between a public and private nuisance, *ib.*
 actual injury not necessary, *ib.*
 a nuisance, though "public benefit done," *ib.*
 length of time will not legalize, *ib.*
 to highways, etc., *ib.*
 offensive trades, etc., *ib.*
 offensive business in a place where offensive ones before carried on, 1028.
 slaughtering horses, etc., *ib.*
 shooting-grounds, etc., 1029.
 gunpowder, *ib.*
 combustible materials on board a ship, *ib.*
 fireworks, *ib.*
 noises in the night, *ib.*
 blowing horns, *ib.*
 a dovecot, *ib.*
 a monster, *ib.*
 steam engines, 1030.
 Court may award costs in case of, *ib.*
 may make order for preventing the nuisance, *ib.*
 proviso for owners of furnaces erected solely for working of mines, etc., *ib.*
 disorderly houses, *ib.*
 bawdy-houses, gaming-houses, and stages for rope-dancers, *ib.*
 playhouses, *ib.*
 lewdness, *ib.*
 bathing, 1031.
 common scold, *ib.*
 persons infected with small-pox, *ib.*
 ferocious animals, 1032.
 a dog that kills sheep, *ib.*
 an unruly horse, *ib.*
 a bull, *ib.*
 beasts *feræ naturæ*, *ib.*
 a mastiff, *ib.*
 who liable for nuisances, *ib.*

NUISANCE, PUBLIC—*continued.*II. *Remedy for, by Removal, etc.*(1.) *Remedy at Common Law.*

any person may remove, 1033.
 what he may do on removal, *ib.*
 no abatement of that which will become a nuisance, *ib.*
 abatement of a nuisance arising from acts of omission, 1033.
 judge, etc., abating, *ib.*
 equity abating, 1034.
 remedy by injunction, *ib.*

(2.) *Remedy by Removal by Statute.*

"The Diseases Prevention Act, 1855," 1034.
 recital of the Nuisances Removal Acts, 1848 and 1849, *ib.*
 short title, *ib.*
 power of entry, *ib.*
 power to privy council to issue orders that provisions herein contained for prevention of diseases may be put in force, *ib.*
 power to general board of health to issue regulations to carry out such provisions, *ib.*
 local extent and duration of regulations of general board, 1035.
 publication of such regulations, *ib.*
 the local authorities to see to the execution of such regulations, etc., *ib.*
 and may direct prosecutions for violating the same, *ib.*
 orders of council, directions, and regulations to be laid before Parliament, *ib.*
 orders in council may extend to parts and arms of the sea, *ib.*
 medical officers of unions and others entitled to costs of attending sick on board vessels when required by orders of general board of health, *ib.*
 penalty for obstructing execution of Act, 1036.
 certain provisions of "Nuisances Removal Act" to apply to this Act, *ib.*
 The "Nuisances Removal Act, 1855," *ib.*
 recited Acts repealed as far as relates to England, except as to proceedings commenced, *ib.*
 interpretation of certain terms used in this Act, *ib.*
 as to filling up vacancies, 1037.
 power to local authorities to appoint committees, *ib.*
 what are deemed nuisances under this Act, 1038.
 notice of nuisances to be given to local authority, etc., to ground proceedings, *ib.*
 power to enter to local authority or their officer, *ib.*
 proceedings by local authority before jus-

NUISANCE, PUBLIC—*continued.*

- II. *Remedy for, by Removal, etc.—cont.*
 tices in the case of nuisances likely to recur, etc., 1039.
 if proved to justices that nuisance exists, etc., they shall issue order for abatement, etc., *ib.*
 cases decided upon the 12th section, *ib.*
 justices' order for abatement, 1040.
 prohibitive order against future nuisance, *ib.*
 penalty for contravention of order of abatement and of prohibition, 1041.
 local authority may enter and remove or abate nuisance, *ib.*
 appeal against order of prohibition, *ib.*
 appeal against order of abatement when structural works are required, *ib.*
 if persons causing nuisance cannot be found, local authority to execute order at once, 1042.
 manure, etc., to be sold, *ib.*
 costs and expenses of works to be paid by person on whom order is made, or owner or occupier, *ib.*
 proceedings before justices to recover expenses, 1043.
 surveyors of highways to cleanse ditches, etc., paying owners, etc., for damages, *ib.*
 power to local authority to cover and improve open ditches, etc., *ib.*
 cases decided upon the 22nd section, *ib.*
 penalty for causing water to be corrupted by gas washings, 1045.
 penalty to be sued for in superior courts within six months, *ib.*
 daily penalty during the continuance of the offence, *ib.*
 as to nuisances arising in cases of noxious trades, businesses, processes, or manufactures, 1046.
 reference to superior court at the option of party complained against, *ib.*
 on certificate of medical officer to local authority that house is overcrowded, proceedings may be taken to abate the same, 1047.
 local authority to order costs of prosecution to be paid out of the rates, *ib.*
 service of notices, summonses, and orders, *ib.*
 proof of resolutions of local authority, *ib.*
 as to proceedings taken against several persons for the same offence, *ib.*
 one or more joint owners or occupiers may be proceeded against alone, *ib.*
 designation of "owner" or "occupier," 1048.
 penalty for obstructing execution of this Act, *ib.*
 penalty on occupier obstructing owner, *ib.*
 penalties and expenses recoverable under 11 & 12 Vict. c. 43, *ib.*

NUISANCE, PUBLIC—*continued.*

- II. *Remedy for, by Removal, etc.—cont.*
 proceedings not to be quashed for want of form, 1048.
 appeals under this Act to be to quarter sessions, *ib.*
 Sunday to be counted in the two days, 1049.
 forms to be used as in schedule, *ib.*
 as to protection of local authority and its officers, *ib.*
 Act not to impair jurisdiction of sewers commissioners or common law remedies for nuisance, nor jurisdiction of local authority as to nuisances referred to in this Act, *ib.*
 Act not to affect navigation of rivers or canals, *ib.*
 saving as to rights of mill owners, etc., *ib.*
 short title, 1050.
 schedule of forms, 1050–1055.
The 23 & 24 Vict. c. 77, 1056.
 sections 3, 6, 7, and 9 of 18 & 19 Vict. c. 121, repealed, *ib.*
 local authority to execute the "Nuisances Removal Act," *ib.*
 how expenses of local authority to be defrayed, *ib.*
 board of guardians may appoint committees for particular parishes, 1057.
 saving for the vestries and district boards of the metropolis, *ib.*
 wells, etc., belonging to any place vested in local authority, etc., 1058.
 penalty for fouling water, *ib.*
 appointment of inspectors of nuisances, *ib.*
 sections 2 and 3 of 18 & 19 Vict. c. 116, repealed, *ib.*
 guardians and overseers of the poor to be the local authorities for executing "Diseases Prevention Act," *ib.*
 local authorities may provide carriages for conveyance of infected persons, 1059.
 justices, on application of householders, may order the removal of nuisances, *ib.*
 guardians may procure sanitary reports and pay for the same, *ib.*
 interpretation of terms, *ib.*
 "The Nuisances Removal Act for England (Amendment) Act, 1863," 1060.
 section 26 of recited Act repealed, *ib.*
 power to medical officer of health or inspector of nuisances to inspect any animal, etc., *ib.*
 penalty for obstructing medical officer of health, etc., 1060.
 this and recited Act to be as one Act, *ib.*
 short title, 1061.
 "The Nuisances Removal Act (No. 1), 1866," 1061.
 section 16 of 23 & 24 Vict. c. 77, repealed, *ib.*
 no justices to be incapable of acting be-

NUISANCE, PUBLIC—*continued*.

- II. *Remedy for, by Removal, etc.—cont.*
 cause member of body authorized to execute Act or liable to contribute, 1061.

"*The Sanitary Act, 1866, Part II.*," 1061.
 definition of "Nuisances Removal Acts," *ib.*

definition of "nuisance authority," *ib.*

power of police with respect to nuisances, *ib.*

section 3 of 23 & 24 Vict. c. 77, repealed, *ib.*
 requisition of ten inhabitants equivalent to certificate of medical officer, *ib.*

addition to definition of "nuisance," 1062.
 duties of nuisance authorities as to inspection of nuisances, *ib.*

as to proceedings of nuisance authority under sect. 12 of 18 & 19 Vict. c. 121, *ib.*
 power to cause premises to be cleansed or otherwise disinfected, 1063.

power to provide means of disinfection, *ib.*
 nuisance authorities may provide carriages for conveyance of infected persons, *ib.*

penalty on person suffering from infectious disorder entering public conveyance without notifying to driver that he is so suffering, *ib.*

removal of persons sick of infectious disorders and without proper lodging in any district, *ib.*

places for the reception of dead bodies may be provided at the public expense, 1064.

places for reception of dead bodies during time required for *post-mortem* examinations may be provided, *ib.*

power to remove to hospital sick persons brought by ships, *ib.*

provision as to district of nuisance authority extending to places where ships are lying, *ib.*

power of entry to nuisance authority or their officer under sect. 11 of 18 & 19 Vict. c. 121, *ib.*

provision as to ships within the jurisdiction of nuisance authority, 1065.

provision for raising money in divided parishes, *ib.*

nuisance authority may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent, *ib.*

Part III. Miscellaneous, 1065.

in cities, boroughs, or towns secretary of state, on application of nuisance authority, may empower them to make regulations as to lodging-houses, *ib.*

cases in which two convictions have occurred within three months, 1066.

penalty on any person with infectious disorder exposing himself, or on any person in charge of such sufferer causing such exposure, *ib.*

penalty on persons letting houses in which

NUISANCE, PUBLIC—*continued*.

- II. *Remedy for, by Removal, etc.—cont.*
 infected persons have been lodging, 1067.

guardians, etc., of the poor to be the local authorities for executing "*Diseases Prevention Act*," *ib.*

evidence of family in case of overcrowded houses, *ib.*

extension to the whole of England and Ireland of sect. 67 of 11 & 12 Vict. c. 63, *ib.*

penalty for wilful damage of works, *ib.*

incorporation of sanitary authorities, *ib.*

appearance of local authorities in legal proceedings, *ib.*

power to reduce penalties imposed by, 6 Geo. 4, c. 78, *ib.*

description of vessels within provisions of 6 Geo. 4, c. 78, 1068.

periodical removal of manure in mews, etc., *ib.*

recovery of penalties, *ib.*

powers of Act cumulative, *ib.*

- III. *Remedy for, by Indictment, Information, or Presentment.*

remedy by indictment, etc., 1068.

the town or leet may prevent nuisances, 1069.

for continuance, *ib.*

form of indictment, *ib.*

particulars of nuisance, *ib.*

- IV. *Punishment for.*

punishment by fine and imprisonment, and to remove the nuisance if it be continuing, 1069.

punishment by cucking-stool, 1070.

effect of pardon, *ib.*

- V. *Forms.*

general form of an indictment for a nuisance, 1070.

indictment for beating feathers on house near a highway and dwelling-houses, *ib.*

indictment for a nuisance from carrying on the trade of a trunk maker, 1071.

indictment for erecting a furnace with a boiler, and using it for the boiling of tripe and offal of beasts, 1072.

indictment for using a shop in a market as a slaughter-house for killing sheep, etc., *ib.*

indictment for keeping a furious dog unmuzzled near a highway, *ib.*

indictment for knowingly keeping an unruly bull in a field through which there is a public footway, 1073.

indictment for exposing a child infected with smallpox in public streets, *ib.*

NUMBER.

statement of, in an indictment, 32.

NURSERY GROUNDS.

stealing from, 242.

injuries to, 779.

OATHS.

false oaths. See PERJURY.
oaths for offices. See OFFICES.

I. *Of Oaths in general, and herein of the Power of "Justices" to administer them.*

meaning of term, 1075.
corporal oath, *ib.*
oath taken on the Common Prayer Book, *ib.*
form of oath, and how administered, *ib.*
taking voluntary affidavits, *ib.*
justices prohibited from taking oaths in extra-judicial matters, 1076.

II. *Affirmations in Lieu of Oaths.*

in courts of civil judicature, 1076.
form of, *ib.*
perjury, *ib.*
extent of Act, *ib.*
in criminal proceedings, *ib.*
form of, *ib.*
perjury, *ib.*

III. *Declarations substituted for Oaths in certain cases.*

The 5 & 6 Will. 4, c. 62, 1077.
repeal of 5 Will. 4, c. 8, *ib.*
lords of treasury empowered to substitute a declaration in lieu of an oath, etc., *ib.*
declarations substituted to be published in *Gazette*, and after 21 days from date the provisions of this Act to apply, *ib.*
and no oath to be administered in lieu of which such declaration has been directed, 1078.
false declarations in matters relating to certain revenues a misdemeanour, *ib.*
oath of allegiance still to be required in all cases, *ib.*
oaths in courts of justice, etc., still to be taken, *ib.*
universities and other bodies may substitute a declaration in lieu of oath, *ib.*
churchwarden's and sidesman's oath abolished, and a declaration to be made in lieu, *ib.*
declaration substituted for oaths, etc., by persons acting in turnpike trusts, 1079.
declaration substituted for oaths, etc., required on taking out patent, *ib.*
declaration substituted for oaths, etc., required by Acts as to pawnbrokers, *ib.*
penalties as to such oaths, etc., to apply to declarations, *ib.*
justices not to administer oaths, etc., touching matters whereof they have no jurisdiction by statute, *ib.*
declaration substituted for oaths, etc., required by Bank of England on transfer of stock, 1081.
declaration substituted for oaths, etc., required by 5 Geo. 2, c. 7, and 54 Geo. 3, c. 15, *ib.*
declaration in writing sufficient to prove execution of any will, codicil, etc., *ib.*

OATHS—continued.

III. *Declarations substituted, etc.—cont.*

suits on behalf of his Majesty to be proved by declaration, 1082.
voluntary declaration in the form in schedule may be taken, *ib.*
making false declaration a misdemeanour, *ib.*
fees on oaths payable on declarations substituted in lieu thereof, *ib.*
declarations to be in the form prescribed by schedule, *ib.*
persons making false declaration deemed guilty of a misdemeanour, *ib.*
form of declaration, *ib.*
saving clause of the 31 & 32 Vict. c. 72, 1083.

IV. *Administering or taking unlawful Oaths.*

oaths for mutinous or seditious and other unlawful purposes a felony, etc., 1083.
persons compelled to take such oaths not justified unless they declare same in four days, *ib.*
persons, aiding, etc., at taking such oaths, though not present, to be deemed principals, *ib.*
in the indictments it shall be sufficient to set forth purport of such oaths, 1084.
engagements in the nature of an oath to be deemed oaths, *ib.*
where offences may be prosecuted, *ib.*
not triable at sessions, *ib.*
statute not confined to oaths administered for seditious purposes, *ib.*
form of oath not material, 1085.
evidence of, *ib.*
oaths to commit treason or felony, *ib.*
persons confessing before being charged indemnified, *ib.*
persons aiding, etc., deemed principals, *ib.*
in indictments sufficient to set forth purport of such oaths, 1086.
societies, members whereof are required to take unlawful oaths, etc., deemed guilty of unlawful combination within 39 Geo. 3, c. 79, *ib.*
persons becoming members of such societies, etc., deemed guilty of unlawful combinations within that Act, 1087.
proviso for freemasons' lodges, *ib.*
and for declaration approved by two justices, pursuant to 39 Geo. 3, c. 79, *ib.*
and for meetings or societies of Quakers, or for charitable purposes, *ib.*

V. *Forms, as to.*
commitment on 52 Geo. 3, c. 104, for administering an unlawful oath, 1088.
indictment on 37 Geo. 3, c. 123, s. 6, for a like offence, *ib.*
the like on 52 Geo. 3, c. 104, *ib.*
indictment for taking such an oath under 37 Geo. 3, c. 123, *ib.*

OBLITERATING RECORDS, 239.

OBSCENE BOOKS.

- Act for preventing the sale of, 1088.
- justices may authorize search of suspected premises, *ib.*
- tender of amends, 1089.
- limitation of actions, *ib.*
- appeal, 1090.
- extent of Act, *ib.*

OBSCENITY. See LIBEL.

OBSTRUCTING OFFICERS. See OFFICE AND OFFICERS.

OFFICE AND OFFICERS.

- proceeding by mandamus relative to, see **MANDAMUS**.
- office, what is one, 1090.
- difference between an office and employment, *ib.*
- offices are civil or military, 1091.
- public or private, *ib.*
- ancient and new offices, *ib.*
- officer by Act of Parliament, *ib.*
- judicial and ministerial, *ib.*
- office held by two titles, one of which bad, *ib.*

I. *Qualifications for Offices in general, and Oaths for.*

- qualifications at common law, 1091.
- oaths of allegiance, supremacy, and abjuration to be taken by persons entering into offices, *ib.*
- "*The Promissory Oaths Act, 1868*," 1092.
- form of oath of allegiance, *ib.*
- form of official oath, *ib.*
- form of judicial oath, *ib.*
- persons to take oath of allegiance and official oath, *ib.*
- persons to take oath of allegiance and judicial oath, *ib.*
- penalty on not taking required oath, *ib.*
- form of oath of allegiance substituted for form in certain other Acts, *ib.*
- prohibition of oath of allegiance except in accordance with Act, 1093.
- the effect of this provision with respect to "Office and Oaths Act, 1867," "Clerical Subscription Act, 1865," and "Parliamentary Oaths Act, 1866," *ib.*
- name of sovereign for the time being to be used, *ib.*
- persons permitted to make affirmation, *ib.*
- regulations as to substitution of declarations for oaths, *ib.*
- penalty on not making declarations required by this Act, 1094.
- saving clause, *ib.*
- saving of powers of alteration hitherto exercised, 1095.
- general saving as to matters herein stated, *ib.*

OFFICE AND OFFICERS—*continued.*I. *Qualifications for Offices, etc.—continued.*

- schedule, 1096.
- exceptions, *ib.*
- inferior offices, *ib.*
- enrolling and fee, 1097.
- oath must be taken with reference to the particular office, *ib.*
- declaration in lieu of sacramental test, and against transubstantiation, *ib.*

II. *Refusing to accept, and neglecting and misbehaving in Offices.*

- refusing to accept office, 1097.
- neglecting duty of office, *ib.*
- misconduct, etc., and corruption, etc., of 1098.
- accepting incompatible office, 1099.

III. *Of Buying and Selling Offices.*

- offence at common law, 1099.
- offence by statute, 12 Ric. 2, c. 2, *ib.*
- sheriff letting office to farm, *ib.*
- offence by 5 & 6 Edw. 6, c. 16, *ib.*
- penalty for buying or selling some sort of offices, *ib.*
- the bargains and assurances shall be void, 1100.
- Act not to extend to office of inheritance, or to office of park-keepers, etc., *ib.*
- act done by an officer removable shall be good, *ib.*
- construction of the 5 & 6 Edw. 6, c. 16, 1101.
- what a bargain or sale, *ib.*
- what a profit, etc., *ib.*
- what an office, 1102.
- what a deputation of an office, 1103.
- exceptions of statute, *ib.*
- disability of parties, and avoidance of contracts by the statute, *ib.*
- relief by courts of equity, 1104.
- relief by courts of law, *ib.*
- provisions of 5 & 6 Edw. 6, c. 16, extended to other offices by the 49 Geo. 3, c. 126, *ib.*
- when right of appointment forfeited, offices vested in his Majesty, 1105.
- persons buying, etc., offices, or receiving, etc., money for offices, guilty of a misdemeanour, *ib.*
- persons receiving, etc., money, for soliciting, etc., offices, guilty of misdemeanour, *ib.*
- persons opening, etc., houses for transacting business relating to sale of, guilty of misdemeanour, *ib.*
- penalty on persons advertising or publishing names of brokers or agents, 1106.
- or houses to be opened, *ib.*
- exception as to purchase or sale of certain offices in palace, or commissions in army at regulated prices, and authorized regimental agents, *ib.*
- officers in army giving more than regulated prices, or paying agents for nego-

OFFICE AND OFFICERS—*continued.*

- III. *Of Buying and Selling Offices—cont.*
 tiating, to forfeit their commissions,
 and be cashiered, 1107.
 their commissions be sold, *ib.*
 half of produce (not exceeding £500) to
 the informer, etc., *ib.*
 exception as to offices excepted in former
 Act, and offices legally saleable, etc., *ib.*
 saving of lawful deputations and payments
 out of the fees, *ib.*
 exception as to annual payments out of
 the fees to any person formerly holding
 the office, 1108.
 offences committed abroad shall be tried
 in King's Bench, *ib.*

ORCHARDS.

- stealing from, 240, 242.
 malicious injuries, 778.

ORDERS OF JUSTICES.

- jurisdiction of justices to make, 1108.
 summons to appear to, *ib.*
 distinction between orders and convic-
 tions, *ib.*
 no difference in construction, 1109.
 form of, *ib.*
 must be in writing, *ib.*
 good in part, and bad for residue, *ib.*
 amendment, 1110.
 enforcing the order, *ib.*
 proof and effect of order, *ib.*
 appeal, *ib.*
 certiorari, *ib.*
 returning to sessions, *ib.*
 amending, *ib.*
 disobedience of orders, *ib.*
 indictment for, 1111.
 trial of, *ib.*
 punishment for, *ib.*
 forms as to, *ib.*

OUTLAWRY. See PROCESS.

OWNERSHIP OF GOODS.

- statement of, in indictment, 23.

OYSTERS, STEALING OF. See LAR-
CENY, 235.

PAMPHLETS. See NEWSPAPERS, 1013.

PANEL. See JURORS.

PARDON.

- what, 1111.
 granted by queen, 1112.
 general pardon, *ib.*
 special pardon, *ib.*
 what pardonable, *ib.*
 offence before committed, *ib.*
 nuisances, *ib.*
 fines, *ib.*
 impeachment, *ib.*
 recognisance, *ib.*
 Queen's sign-manual to pardon not requi-
 site, *ib.*

PARDON—*continued.*

- punishment for felony, after endured, to
 have effect of pardon under great seal,
 1113.
 pardon to contain the suggestion, *ib.*
 pardon to specify the offence, if murder,
 treason, or rape, *ib.*
 person pardoned may be bound to good
 behaviour, *ib.*
 pardon doth not restore lands or goods
 forfeited, *ib.*
 doth not restore the corruption of blood,
 1114.
 doth restore the credit, *ib.*
 may sue for calling him a felon, *ib.*
 at what time, and how pleadable, *ib.*

PARLIAMENT.

I. *Registration of Electors for Counties,
and Duties of Overseers, etc., therein.*

- 6 Vict. c. 18, repealing the "Reform
 Act" as to registration of electors,
 1115.

clerks of the peace to have forms of pre-
 cepts, etc., printed, *ib.*

clerk of peace to issue his precepts with
 forms of notices, etc., to overseers, *ib.*

clerk of peace to deliver precept to over-
 seers of poor before 10th of June in
 every year, *ib.*

overseers to give notice annually requir-
 ing voters to send in their claims, 1116.

overseers to publish register, 1117.

overseers to prepare list of claimants, *ib.*

overseers empowered to object to any
 name, *ib.*

to add the word "dead" against any
 name; to publish copies of lists of
 claimants, and of the part of the regis-
 ter of voters relating to their own pa-
 rish; to keep copies of same for inspec-
 tion and sale, *ib.*

the list of claimants in any parish, and
 the part of register relating to that
 parish, to be deemed list of voters of
 such parish, 1118.

regulation to be observed as to registra-
 tion of voters, *ib.*

occupation franchise for voters in coun-
 ties, *ib.*

provision as to £12 occupiers, *ib.*

application of certain rating sections to
 counties, 1119.

any person on register may object to any
 other person named in list as not en-
 titled to be upon it, *ib.*

notice of objection to be given to over-
 seers, and also to party objected to, *ib.*

notice of objection may be sent by post,
 1120.

list of persons objected to to be published,
ib.

lists, etc., to be delivered to the clerk of
 the peace, 1121.

PARLIAMENT—continued.

II. *Registration of Electors for Cities and Boroughs, and Duties of Overseers therein.*

town clerk to have forms of precepts, etc., printed, 1121.

to issue his precept to overseers, *ib.*

overseers to give public notice as to payment of rates and taxes by occupiers of premises of yearly value of £10, *ib.*

overseers to have power of inspecting tax assessments, etc., 1122.

assessors or collectors of taxes to deliver to overseers a list of persons in arrear of taxes payable at April last past, *ib.*

overseers to prepare and publish lists of persons (other than freemen) entitled to vote, *ib.*

copies of lists to be kept for inspection and sale, 1126.

occupiers in boroughs to be rated, and not owners, *ib.*

provisoes as to compositions, etc., *ib.*

first registration of occupiers of dwelling-houses, etc., *ib.*

town clerks to prepare and publish lists of freemen, 1127.

persons omitted from borough lists to give notice of their claims, *ib.*

claims in respect of lodgings, *ib.*

lists of claimants to be made, *ib.*

registered electors and claimants may inspect rate-books, *ib.*

persons named in lists may object to others as not being entitled to be in the list, 1128.

notice of objection to be given to overseers or to town clerk, and also to person objected to, *ib.*

lists of persons objected to to be made, *ib.*

such lists and lists of claimants to be published, *ib.*

copies of lists and notices of objection to be kept for inspection, *ib.*

overseers to deliver copies of lists to town clerk, *ib.*

freeholders in Horsham and Malmesbury entitled to vote for New Shoreham and Cricklade, where to be registered, *ib.*

provision as to places having no overseers, 1129.

III. *Publication of Notices, Lists, Registers, etc.*

what shall be publication of notice, 1129.

time for which publication shall be, *ib.*

penalty for hindering publication, *ib.*

lists not invalidated by imperfect publication, *ib.*

if no list made out or published, former list to be in force, 1130.

IV. *Appointment and Duties of Barristers for Revising Lists; etc.*

barrister to notify his appointment to
VOL. III.

PARLIAMENT—continued.

IV. *Appointment, etc., of Barristers—cont.*
 clerk of peace and town clerks, who are to transmit to him abstracts and lists, 1130.

barristers to hold courts for revising lists of voters for counties within a certain period, and to give notices of times and places of holding such courts to clerk of the peace, who is to give notice thereof by advertisement, and to overseers, *ib.*

as to time for revision of county lists, *ib.*

barristers to hold courts for revising lists of voters for boroughs, and give notice thereof to town clerk, who is to publish the same, *ib.*

clerk of peace to attend first court, and overseers to attend courts for their respective districts and parishes, and produce lists of voters and answer questions, 1131.

production of rate-books by overseers, 6 Vict. c. 18, ss. 34, 35, *ib.*

power of revising barrister to summon overseers, etc., 6 Vict. c. 18, ss. 34, 35, *ib.*

town clerks, overseers, and in London secondaries and clerks of companies, to attend courts, to produce list, and answer questions, etc., *ib.*

power of barrister to require attendance of overseer of past year, and assessor and collector, etc., of taxes, who shall answer upon oath all questions put to them, 1132.

voters residing out of polling district to which parish wherein qualification is situated belongs, may vote in another polling district on making claim before revising barrister, *ib.*

barrister to have power to insert in county lists names of claimants omitted by overseer on proof of claim and qualification, *ib.*

power of barrister to insert names in lists of borough voters, *ib.*

any person on the list of voters may object to claimants, *ib.*

corrections which may be made by barrister in register, 1133.

no change to be made of qualification stated in lists, *ib.*

mode of proceeding in cases of objection, *ib.*

provisions in certain cases of change of abode, *ib.*

power of revising barrister to adjourn courts, administer oaths, etc., *ib.*

persons swearing falsely, guilty of perjury, 1134.

barrister in open court to decide upon validity of claims and objections, *ib.*

power to barrister to give costs in certain

PARLIAMENT—*continued.*IV. *Appointment, etc., of Barristers—cont.*
cases to parties claiming or objecting, 1134.orders for costs, *ib.*

such costs in no case to exceed £5, 1135.

revising barrister to read out names expunged and inserted, *ib.*power to remove persons from court who interrupt proceedings, *ib.*county lists to be transmitted to clerk of the peace, and to be by him copied into a book, *ib.*clerk of peace to sign and deliver copy to sheriff, *ib.*

borough lists to be delivered to town clerks and copied into a book, 1136.

town clerk to sign and deliver same to returning officers, *ib.*books to be register of voters for one year, *ib.*copies of registers to be printed for sale, *ib.*assessors and other officers neglecting to attend when summoned by revising barrister, liable to be fined, *ib.*power to barristers to fine overseers for neglect of duty, *ib.*

fines, to whom payable, and to what purpose to be applied, 1137.

clerk of peace and town clerk to account for and pay over all moneys received by them, *ib.*expense of clerks of peace, how to be defrayed, *ib.*

expense of town clerks and returning officers, how to be defrayed, 1138.

definition of expenses of registration, *ib.*meaning of the words town clerk in certain cases, *ib.*

expenses of overseers, how to be defrayed, 1139.

expenses of overseers and relieving officers, *ib.*certificate of revising barrister to be conclusive, *ib.*no payment necessary by persons making claim in counties; nor by persons on register in cities and boroughs, *ib.*remuneration of revising barristers, *ib.*costs and fines to be recovered by distress and sale of the parties' goods, *ib.*no *certiorari* allowed, *ib.*

recovery of expenses by town clerks and returning officers, 1140.

V. *Proceedings prior to and at the Election of Members for Counties.*

sheriffs of the divided counties to fix the time and preside at elections, 1140.

place of election, *ib.*returning officer to be sworn, *ib.*

commencement and continuance of polls at county elections, 1141.

PARLIAMENT—*continued.*V. *Proceedings at Elections, etc.—cont.*

counties to be divided into districts for polling, 1141.

polling booths for counties, *ib.*no voter to poll out of the district where his property lies, *ib.*additional polling places may be appointed upon petition from justices in quarter sessions assembled, *ib.*

notices to be given previous to any petition being made, 1142.

as to the number of polling booths to be provided, *ib.*

adjournment of nomination or poll in case of riot, 1143.

candidates or persons proposing a candidate without his consent, to be at the expense of booths and poll clerks, 1144.

limitation of expense, *ib.*deputies and poll clerks, *ib.*extra accommodation in boroughs, *ib.*rooms to be hired for taking polls wherever they can be obtained, *ib.*

houses may be hired for polling in, instead of booths, 1145.

certified copies of the register of voters for each booth, *ib.*powers of deputies of returning officers, *ib.*all election laws to remain in force, except where superseded by this Act, *ib.*interpretation clause, *ib.*meaning of the word "county," *ib.*"city or borough," *ib.*"clerk of the peace," *ib.*"town clerk," *ib.*"barrister," *ib.*"returning officer," *ib.*"parish or township," *ib.*"overseers," or "overseers of the poor," *ib.*

provisions as to service of notices, 1146.

justices, sessions, clerks of the peace, and treasurers of counties, *ib.*misnomer not to vitiate, *ib.*"oath," *ib.*singular, *ib.*plural, *ib.*

sheriffs' deputies, custody of poll books

and final declaration of the poll, *ib.*

oath or affirmation, etc., to be taken by

poll clerks, 1147.

sheriff in county elections may act in

places of exclusive jurisdiction, *ib.*

clause as to putting question at the poll

repealed, *ib.*

no inquiry at time of election, except as

to identity of voter, and whether he

has already voted, *ib.*oaths to be taken if required, *ib.*no other oath to be taken, *ib.*no scrutiny to be allowed, *ib.*construction of the first question, *ib.*

PARLIAMENT—*continued.*V. *Proceedings at Elections, etc.—cont.*

- returning officer, 1148.
 - oaths, 1149.
 - oaths of allegiance, supremacy, and abjuration, not to be taken, *ib.*
 - votes excluded from the register by the barrister may be tended at elections, and recorded, *ib.*
 - register to be conclusive evidence of voter's retaining same qualification, *ib.*
 - proviso, *ib.*
 - in cities and boroughs, a continued residence required to time of polling, *ib.*
 - persons personating voters to be guilty of a misdemeanour, *ib.*
 - aiders and abettors to be punished as principals, *ib.*
 - agents may be appointed by candidates to detect personation at the time of polling, 1150.
 - returning officer may order persons charged with personation to be taken into custody, *ib.*
 - vote not to be rejected if questions answered in the affirmative, *ib.*
 - persons charged with personation to be taken before two justices, *ib.*
 - bail to be taken in certain cases, *ib.*
 - if justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial, *ib.*
 - if justices are satisfied that the charge is unfounded, they are to order compensation, 1151.
 - if party falsely charged accept compensation, no action to be brought, *ib.*
 - sheriffs and returning officers to provide constables, *ib.*
 - voters not compellable to serve as special constables during elections, *ib.*
 - duty of returning officer, where vote has been received, and another party tenders in respect of same qualification, *ib.*
 - liverymen of London to poll in the Guild-hall, 1152.
 - for providing for the safe custody of poll books, *ib.*
 - office copies of poll-books to be received in evidence in courts, 1153.
 - clerk of the crown to preserve poll-books and deliver office copies if required, *ib.*
 - and to produce them before election committees if required, *ib.*
 - parties wilfully contravening the Act liable to an action for debt, *ib.*
 - candidates' agents' names to be published, *ib.*
 - death or legal incapacity of agent, *ib.*
- VI. *Proceedings previous to and at the Election of Members for Cities and Boroughs.*
- duty of returning officer, etc., 1153.

PARLIAMENT—*continued.*VI. *Proceedings previous to, etc.—cont.*

- special Acts to be read where election in freemen, etc., 1153.
 - oaths of allegiance, supremacy, and abjuration not to be taken, 1154.
 - repeal of such part of 2 Will. 4, c. 45, as relate to poll being kept open for two days, *ib.*
 - period of polling for boroughs limited to one day, *ib.*
 - polling for boroughs in England to be at several booths, *ib.*
 - amendment of law as to numbers in polling booths, *ib.*
 - not more than 100 if so required, *ib.*
 - on such requisition, notice to be given of the situation of booths, 1155.
 - each person to vote at the booth for his district, *ib.*
 - if booths in different places, a deputy to preside at each, *ib.*
 - custody of poll-books and final declaration of poll, *ib.*
 - polling booths, etc., in divisions of boroughs, *ib.*
 - amendment of sect. 34 of 30 & 31 Vict. c. 102, 1156.
 - the two questions to be tendered to voters, *ib.*
 - the oath, *ib.*
 - polling districts for Shoreham, Cricklade, Aylesbury, and East Retford, *ib.*
 - sheriff to execute writ where vacancy in office of returning officer, 1157.
- VII. *Other General Matters previous to an Election.*
- parliament, how summoned, 1157.
 - form of writ, *ib.*
 - writs, etc., to be made conformable to this Act, *ib.*
 - course in which election writs forwarded by messenger of the great seal, and through the post office, 1158.
 - persons to whom such writs are usually directed must give an account of the places of their offices, *ib.*
 - mileage and other fees abolished, except £2 2s. on a vacancy, and £50 on a new parliament, *ib.*
 - persons acting in violation of the Act guilty of a misdemeanour, *ib.*
 - offences in Scotland, *ib.*
 - vacancy by death, resignation, etc., or bankruptcy, 1159.
 - time of proclamation for county election, *ib.*
 - in boroughs, *ib.*
 - form of notice, 1160.
 - returning officer to give notice of election, *ib.*
 - notice of time and place of election to be given within certain hours, *ib.*
 - inspectors, *ib.*

PARLIAMENT—*continued.*VII. *Other General Matters, etc.—cont.*

- check-book, 1160.
- in counties of towns, *ib.*
- notice, how to be given at New Shoreham, *ib.*
- Cricklade, etc., *ib.*
- Aylesbury, etc., *ib.*
- East Retford, etc., *ib.*
- place of election for boroughs, *ib.*

VIII. *Bribery, Treating, and Intimidation.*

- bribery defined, 1161.
- what shall be deemed to be bribery, *ib.*
- payment of expenses of conveying voters in boroughs to the poll illegal except in cases herein-named, 1162.
- bribery further defined, *ib.*
- penalty, 1163.
- corrupt payment of rates to be punishable as bribery, *ib.*
- treating defined, *ib.*
- penalty, *ib.*
- refreshments to voters on the days of nomination or polling declared illegal, *ib.*
- undue influence defined, 1164.
- penalty, *ib.*
- penalties how to be recovered, *ib.*
- costs and expenses of prosecutions, *ib.*
- in cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor, *ib.*
- prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecutions and pay costs, *ib.*
- limitation of actions, *ib.*
- sect. 14 of 17 & 18 Vict. c. 102, extended to misdemeanours, etc., 1165.
- general allegations sufficient in indictment, *ib.*
- evidence of witness on election committee and before commissions, *ib.*
- no payment, etc., shall be made by or on behalf of candidates otherwise than by authorized agents, *ib.*
- bills, etc., to be sent in within month to agent or right to recover barred, 1166.
- as to publication of statement of election expenses, *ib.*
- no cockades, etc., to be given away at elections, 1167.
- penalty, *ib.*
- in actions for penalties, parties, etc., to be competent witnesses, *ib.*
- interpretation of terms, *ib.*
- continuance of "Corrupt Practices Prevention Act," *ib.*

IX. *Schedules and Forms.*

- indictment on 2 Will. 4, c. 45, s. 19, against a voter for giving a false answer at an election, 1182.

PARTICULARS, BILL OF.

- of nuisances, in an indictment for, 1069.

PARTNERS.

- property of, how described in indictment, 24.

PAUPER.

- defending *in formâ pauperis*, 1182.
- pauper lunatics. See LUNATICS.

PAWNBROKERS AND PAWNING.

- licence to pawnbrokers, 1183.
- one house only under one licence, *ib.*
- partnership, *ib.*
- who deemed pawnbrokers, *ib.*
- not persons lending at 5 per cent., *ib.*
- the 39 & 40 Geo. 3, *ib.*
- rate of profit to be taken, *ib.*
- pawnbrokers allowed to take certain rates, *ib.*
- rates of interest to be taken, *ib.*
- rate when the intermediate sum lent exceeds 2s. 6d., but does not exceed 40s., 1185.
- pawnbrokers to give farthings in change, *ib.*
- limiting the profits for part of a month, 1186.
- pawns to be entered in books to be kept, *ib.*
- pawnbrokers to give duplicates, 1187.
- amount of profits to be endorsed on duplicates of pledges redeemed, 1188.
- penalty against unlawfully pawning goods property of others, from £5 to 20s., and the value of the goods, *ib.*
- or imprisonment not exceeding three months, and whipping, *ib.*
- forging, counterfeiting, or uttering duplicates, 1189.
- persons not giving a good account of themselves on offering to pawn goods, liable to punishment, *ib.*
- persons buying or taking in pledge unfinished goods or linen, or apparel intrusted to others to wash or mend, to forfeit double the sum lent, and restore the goods, 1190.
- empowering peace officers to search for unfinished goods, etc., unlawfully come by, which shall be restored to owner, *ib.*
- where goods unlawfully pawned, pawnbroker to restore them, 1191.
- penalty on pawnbroker who will not deliver up goods to pawner, 1192.
- imprisonment till re-delivery of the goods, or satisfaction made, 1194.
- persons producing notes or memorandums deemed owners, as against pawner of goods, *ib.*
- unless pawnbroker has had notice from real owner not to deliver, etc., *ib.*
- where notes or memorandums lost, pawn-

PAWNBROKERS, etc.—*continued*.

broker to deliver a copy to claimant of pawn, 1195.
 also a copy of a declaration of property, *ib*.
 claimant on proof of right to pawn by such declaration, to be taken before a magistrate, *ib*.
 may redeem goods, *ib*.
 pawned goods deemed forfeited at end of year, 1196.
 pledges above 10s. to be sold by auction, *ib*.
 pictures, prints, books, statues, etc., shall only be sold four times in a year, etc., *ib*.
 on notice from persons having goods in pledge not to sell, three months further allowed beyond year for redemption, 1197.
 account of sales of pledges above 10s. to be entered in a book, *ib*.
 and overplus paid to owners of goods pawned or sold, etc., *ib*.
 on penalty of £10 and treble sum lent on pawn, *ib*.
 pawnbroker shall not purchase goods while in his custody, 1198.
 pledges not to be taken from persons under twelve years of age, or intoxicated, *ib*.
 hours of buying goods or taking in pawn limited, *ib*.
 pawnbrokers to place in view table of profits, etc., 1199.
 pawnbroker's names and business to be placed over his door, on penalty of £10, etc., 1199.
 pawnbrokers selling goods before limited time, or injuring them, etc., to make satisfaction, *ib*.
 pawnbrokers to produce books when necessary, 1200.
 penalties on pawnbrokers, in neglecting entries, 1201.
 for other offences against the Act, *ib*.
 penalties enforceable by distress, *ib*.
 application of penalties, *ib*.
 limiting time of prosecution by information, *ib*.
 information to be made before a justice near the place, *ib*.
 churchwardens, etc., to prosecute, etc., *ib*.
 convicted persons, etc., not to prosecute or inform against persons, etc., 1202.
 Act not to extend to persons lending money at £5 per cent. without further profit, *ib*.
 Act to extend to executors, etc., of pawnbrokers, *ib*.
 general issue, *ib*.
 double costs, *ib*.
 full indemnity against costs, *ib*.
 inhabitants competent witnesses, *ib*.
 form of conviction, *ib*.
 to be filed, 1203.
certiorari, *ib*.

PAWNBROKERS, etc.—*continued*.

appeal, 1203.
 recognizance on, *ib*.
 costs on, *ib*.
The 19 & 20 Vict. c. 27, 1203.
 persons therein described deemed to be pawnbrokers, 1204.
 penalty on not taking out proper licence, *ib*.
 recoverable by summary information, *ib*.
 power to justices to mitigate penalties, *ib*.
 amends may be awarded for frivolous information, *ib*.
 penalty on common informers for compounding informations, 1205.
 power to lessen the share of informers, *ib*.
 power to mitigate penalties, *ib*.
 proviso as to revenue Acts, *ib*.
 compelling attendance of offender and witnesses, *ib*.
 no fees to be taken, 1206.
 penalty on pawning goods provided for use of the poor, *ib*.
 penalty on persons pawning, or receiving in pawn, clothes or other articles, marked "Chelsea Hospital," 1207.
 pawning manufactured goods by person intrusted, etc., *ib*.
 declaration substituted for oaths and affidavits required by Acts as to pawnbrokers, 1208.
 penalties as to such oaths, etc., to apply to declarations, *ib*.
forms as to, *ib*.

PEERS.

not conservators of peace, 1213.
 sureties of peace against, *ib*.
 trial of, *ib*.
 description in indictment, *ib*.
 outlawry of, *ib*.
 witnesses, *ib*.
 removal of doubt, as to punishment of, in certain cases, *ib*.

PENAL ACTION. See INFORMATION.

PENAL SERVITUDE.

The 16 & 17 Vict. c. 99, 1214.
 conditional pardons as in cases of transportation, *ib*.
 persons under sentence or order of penal servitude how dealt with, *ib*.
 all Acts concerning convicts sentenced to transportation made applicable for the purposes of this Act, 1215.
 licences to be at large to convicts under sentence of transportation, *ib*.
 holder of licence not to be imprisoned, etc., by reason of his sentence, *ib*.
 provided licence be not revoked, *ib*.
 persons convicted of larceny after previous conviction not to be transported, but sent to penal servitude, 1216.
 Queen's prerogative, *ib*.

PENAL SERVITUDE—*continued*.

discretion of courts as to alternative punishment not to be affected, 1216.
 transportation to include banishment, *ib*.
The 20 & 21 Vict. c. 3, ib.
 sections of former Act repealed, *ib*.
 sentence of transportation abolished, *ib*.
 penal servitude substituted, *ib*.
 provisions of Acts as to transported offenders to apply to penal servitude, 1217.
 existing power to appoint places of transportation to apply to this Act, *ib*.
 magistrates may recommit convicts whose licences are revoked, *ib*.
 all enactments referring to transportation to apply to penal servitude, *ib*.
 recited Act and this to be read as one Act, *ib*.
The 27 & 28 Vict. c. 47, ib.
 short titles, *ib*.
 length of sentences, *ib*.
 punishment of offences in convict prisons, 1218.
 forfeiture of licence, *ib*.
 offences by holders of a licence, *ib*.
 apprehension of holder of licence without warrant, 1219.
 summary punishment of offences, *ib*.
 where holder summarily convicted, magistrate to forward certificate to secretary of state, *ib*.
 effect of forfeiture, or revocation of licence, *ib*.
 licences may be granted in form differing from that in schedule (A), *ib*.
 schedules, 1220.

PENSIONS. See MILITARY LAW.

PERJURY, AND SUBORNATION OF.

I. *By Common Law.*

What Constitutes the Offence.
 in general, 1221.
 must be wilful *ib*.
 must be false; or if true, not so within defendant's knowledge, *ib*.
 swearing to belief, 1222.
 must be on oath, *ib*.
 false affirmations of Quakers, Moravians, Separatists, *ib*.
 persons to be bound by oath administered in form, etc., which such persons may declare binding, *ib*.
 affirmation instead of oath, 1222, 1223.
 two cannot be indicted for, in one indictment, 1223.
 must be legally sworn, *ib*.
 must be in a judicial proceeding, *ib*.
 swearing absolutely, 1225,
 swearing as to legal operation of an instrument, *ib*.
 must be material to point in issue, *ib*.
 whether believed or not, 1227.
 false oath indictable in some cases, though not assignable as perjury, *ib*.

PERJURY, etc.—*continued*.*Indictment for.*

against two, 1227.
 sufficient to set forth substance of offence, *ib*.
 provisions of statute should be attended to, 1228.
 striking out superfluous allegations, *ib*.
the 14 & 15 Vict. c. 100, s. 19, ib.
 any judge, etc., may direct prosecution for perjury, *ib*.
 and commit the party and bind persons to give evidence, *ib*.
 recognizance to appear, *ib*.
 certificate of prosecution being directed, *ib*.
 simplification of indictments in cases of perjury, 1229.
 in cases of subornation, *ib*.
 certificate of indictment and trial sufficient evidence of the trial, 1230.
 persons who may administer an oath, *ib*.
 inducement, *ib*.
 statement of time, *ib*.
 statement of place, 1231.
 statement of the proceeding or court, *ib*.
 court must be correctly described, 1232.
 authority of court, 1233.
 the oath, *ib*.
 defendant falsely swore, *ib*.
 the matter sworn to, *ib*.
 variance in, 1234.
 innuendoes, *ib*.
 assignments of perjury, 1235.
 materiality, 1236.
 conclusion, 1237.

Evidence of Offence.

number of witnesses, 1238.
 the evidence must be clear, 1239.
 speaking from memory, *ib*.
 court before whom oath taken, *ib*.
 occasion of oath, 1240.
 identity, 1241.
 the perjury itself, 1242.
 innuendoes, *ib*.
 materiality, *ib*.
 wilfulness, *ib*.
 evidence of joint offender, 1243.
 evidence of chairman of sessions, *ib*.
 of judges of superior courts, *ib*.
 of advocate and attorney, *ib*.
 judges' notes not evidence, *ib*.
 admissions entered into between attorneys in prosecution, *ib*.

*Prosecution for, by Direction of Judge.**Certiorari.—Quashing, etc., Indictment.**—Trial.—Former Acquittal, etc.*

prosecutions by direction of judge, 1243.
certiorari, 1244.
 quashing indictment, *ib*.
 judge may refuse to try bad indictment, *ib*.
 striking out superfluous matter, *ib*.
 not triable at sessions, *ib*.
 trial pending action, 1245.

PERJURY, etc.—continued.

Prosecution for, etc.—continued.

trial on admissions, 1245.

new trial, *ib.*

second indictment, *ib.*

plea of autrefois acquit, *ib.*

Punishment and Consequences.

in general, 1245.

perjured person not to be juror, and formerly not witness, *ib.*

II. *Subornation of Perjury at Common Law.*

offence of in general, 1246.

indictment, *ib.*

evidence, *ib.*

not triable at sessions, *ib.*

punishment for, *ib.*

III. *Perjury, and Subornation of, by stat. 5 Eliz. c. 9.*

procuring a witness to commit perjury in any matter in suit, etc., punishable by forfeiture of £40, 1246.

such offender not having goods, etc., to value of £40 to suffer imprisonment, 1247.

persons convicted not to be witnesses until judgment reversed, *ib.*

competency restored, *ib.*

persons committing perjury to forfeit £20, to be imprisoned for six months, *ib.*

if such offenders have not goods to the value of £20, they are to be set in pillory, to be disabled from being witnesses until judgment reversed, 1248.

disposal of forfeitures, *ib.*

trial of offences, *ib.*

proclamation at assizes, *ib.*

Act not to extend to spiritual courts, *ib.*

nor to restrain other punishment of perjury, *ib.*

statute extends only to witnesses, *ib.*

mode of proceeding, *ib.*

a party must be aggrieved, 1249.

justices at sessions, *ib.*

punishment for, *ib.*

indictment for, *ib.*

"wilfully and corruptly," *ib.*

evidence on, 1250.

costs, *ib.*

IV. *Perjury under particular Statutes.*V. *Power and Duty of Justices in.*

not triable at sessions, 1252.

form of commitment, *ib.*

judges may direct prosecution for perjury, *ib.*

VI. *Forms as to.*

commitment for, 1252.

indictment in affidavit to hold to bail made before judge, *ib.*

the like where affidavit was sworn before commissioner of Queen's Bench, 1253.

PERJURY, etc.—continued.

VI. *Forms as to—continued.*

indictment for perjury in justifying bail in Court of Queen's Bench, 1253.

the like in justifying bail as before judge at chambers, 1254.

indictment for perjury by witness on trial in Queen's Bench at Westminster, at sittings in term, 1255.

indictment for perjury on trial at assizes, 1256.

indictment for perjury in affidavit sworn in court in opposition to a rule to show cause why judgment should not be set aside, *ib.*

indictment for perjury in answer sworn before Master in Chancery, 1257.

indictment for perjury in cause in ecclesiastical court, 1258.

indictment for perjury on complaint before magistrate, *ib.*

indictment for perjury giving evidence on trial at Westminster Hall, of issue on indictment for perjury, 1259.

commitment for subornation of perjury, 1260.

indictment for subornation of perjury, *ib.*

PERSONATING.

of soldiers, etc. See MILITARY LAW.

voters at election, 1147–1151.

PETIT JURY. See JURORS.

PETIT LARCENY. See LARCENY.

PETROLEUM.

The 25 & 26 Vict. c. 66, 1261.

interpretation clause, *ib.*

regulations to be observed by a ship carrying petroleum, *ib.*

definition of local authority, 1262.

mode of granting licences, *ib.*

in case of refusal of licence the applicant may memorialize secretary of state, *ib.*

forfeitures and penalties in England and Ireland, 1263.

recovery of penalties in Scotland, *ib.*

search for petroleum, *ib.*

reservation of previous powers with respect to inflammable substances, *ib.*

The 31 & 32 Vict. c. 66, "*Petroleum Act*, 1868," *ib.*

Act to be construed with former Act, *ib.*

definition of petroleum, *ib.*

third section of former Act repealed, 1264.

storage of petroleum, *ib.*

prohibition of sale of petroleum for purpose of illumination, *ib.*

inspector of weights, etc., may test petroleum, *ib.*

trial of offences under Petroleum Acts, *ib.*

mode of testing petroleum, 1265.

schedule; directions for flashing test, *ib.*

PHYSICIANS, SURGEONS, APOTHECARIES, CHEMISTS AND DRUGGISTS. See **MEDICAL PRACTITIONERS.**

PICKPOCKETS. See **LARCENY.**

PIGEONS. See **LARCENY**, 234.

PIRACY.

at common law, 1265.

by statute, 1266.

king's subjects, etc., committing piracy on others of king's subjects by commission from foreign prince, shall be pirates, etc., *ib.*

commander or mariner, who shall betray his trust, *ib.*

or turn pirate, etc., *ib.*

persons setting forth, or aiding or assisting any pirate, etc., 1267.

shall be adjudged accessories, *ib.*

the like for concealing pirates, etc., *ib.*

how accessories shall be tried, *ib.*

reward to discover a combination for running away with ship, etc., *ib.*

and how to be paid, *ib.*

seamen deserting merchant ships to lose their wages, *ib.*

trading with pirates, furnishing them with stores, 1268.

corresponding with them, etc., *ib.*

forcibly boarding any merchant ship, throwing any goods overboard, *ib.*

persons declared accessories to piracy, by 11 & 12 Will. 3, c. 7, shall be deemed principals, *ib.*

forfeiture of wages, *ib.*

subjects or denizens, during any wars, committing hostilities at sea, against his Majesty's subjects, where the admirals have power, or giving aid, etc., to enemies at sea, may be tried as pirates, *ib.*

not to be tried again for same crime as high treason, *ib.*

criminals not tried by this Act, may be tried for high treason by 28 Hen. 8, c. 5, 1269.

dealing in slaves on high seas, etc., to be deemed piracy, *ib.*

punishment for piracy, *ib.*

when murder intended, *ib.*

transportation or imprisonment in other cases, 1270.

punishment of accessories, *ib.*

place, mode of imprisonment, *ib.*

trial of, *ib.*

indictment for piracy at common law, *ib.*

PLACE. See **INDICTMENT.**

PLAYERS AND PLAYHOUSES.

ancient laws as to, 1271.

general matters as to, *ib.*

may be a nuisance, *ib.*

obscene plays, *ib.*

riot, *ib.*

conspiracy to hiss a play, *ib.*

PLAYERS AND PLAYHOUSES—contd.

removing parties guilty of breach of peace, 1271.

agreement as to a box in a theatre does not run with the land, *ib.*

agreement with actor, *ib.*

regulations of, by 6 & 7 Vict. c. 68, 1272.

repeal of prior Acts, *ib.*

all theatres for performance of plays must be licensed, *ib.*

penalty for keeping unlicensed theatre, *ib.*

what licences shall be granted by lord chamberlain, *ib.*

fee for lord chamberlain's licence, 1273.

licences may be granted by justices, *ib.*

fees for justices' licence, *ib.*

to whom licences shall be granted, *ib.*

rules for theatres under control of lord chamberlain, *ib.*

rules for enforcing order in theatres licensed by justices, 1274.

proviso for universities of Oxford and Cambridge, *ib.*

penalty on persons performing in unlicensed theatre, *ib.*

no plays or additions to old ones to be acted until submitted to lord chamberlain, 1275.

fees to be paid for examination of plays, etc., *ib.*

the lord chamberlain may forbid any play, *ib.*

penalty for acting plays before they are allowed, *ib.*

or after they have been disallowed, *ib.*

what shall be evidence of acting for hire, *ib.*

proof of licence in certain cases to lie on party accused, *ib.*

proceedings begun before passing of this Act may be discontinued, 1276.

penalties how to be recoverable, *ib.*

appeal, *ib.*

appropriation of penalties, *ib.*

limitation of actions, 1277.

interpretation of Act, *ib.*

limits of Act, *ib.*

police empowered to enter unlicensed theatres, etc., and apprehend persons found in them, *ib.*

PLEA.

plea of demurrer, 1278.

plea in abatement, *ib.*

plea in bar, *ib.*

the general issue, *ib.*

a plea of "not guilty," without more, shall put prisoner on his trial by jury, *ib.*

if he refuses to plead, court may order a plea of "not guilty" to be entered, *ib.*

prisoner cannot after sentence retract plea of guilty, 1279.

plea of general issue, *ib.*

plea of general issue of information *ex officio* in Queen's Bench, *ib.*

PLEDGE. See PAWNBROKERS AND PAWNING.

pledging goods or embezzlement by factors, etc., 266.

POISON.

the 26 & 27 Vict. c. 113, 1279.

penalty for selling poisoned grain, seed, or meal, *ib.*

penalty for sowing, etc., poisoned grain, seed, or meal, *ib.*

solutions or infusions, etc., allowed for use in agriculture, 1280.

recovery of penalties, *ib.*

application of former Acts, *ib.*

informer not a constable entitled to moiety of penalty, *ib.*

indemnity to witnesses, etc., *ib.*

penalty for placing poisoned flesh in fields, etc., *ib.*

not to apply to occupier placing poisoned preparations for destruction of vermin, *ib.*

application of Act, *ib.*

the 31 & 32 Vict. c. 121, 1281.

protection of titles and restrictions on sale of poison, *ib.*

reserving rights of certain persons, *ib.*

regulations to be observed in the sale of poisons, *ib.*

schedules, 1282.

POISONING.

poisoning with an intent to murder, and attempts to poison, 749.

POLICE (TOWNS).

"*The Towns Police Clauses Act*," 1283.

interpretations in this Act, *ib.*

and in the special Act, *ib.*

appointment of constables, 1284.

power to apply for additional in case of need, *ib.*

constables to be sworn in, *ib.*

expenses of prosecutions and allowance to constables, *ib.*

constables not to resign without leave or notice, *ib.*

constables dismissed to deliver up accoutrements, 1285.

penalty for unlawful possession of accoutrements, or for assuming the dress of a constable, *ib.*

power to provide offices, watch-houses, etc., *ib.*

duties of constables, *ib.*

power to police constables and persons aggrieved to apprehend certain offenders, *ib.*

penalty for neglect of duty, *ib.*

power to constables to take recognizances, 1286.

form of recognizances, *ib.*

recognizances to be registered and returned to justices, *ib.*

POLICE (TOWNS)—continued.

penalties on persons assaulting constables, 1286.

power to prevent obstructions in the streets during public processions, etc., *ib.*

power to regulate the route of carriages, etc., during divine service, *ib.*

proprietors of stage carriages deviating from route by order, free from penalty, *ib.*

power to impound stray cattle, 1287.

power to sell stray cattle for penalty and expenses, *ib.*

persons guilty of pound-breach to be committed for three months, *ib.*

power to provide a pound, *ib.*

penalty upon persons committing any offences herein named, *ib.*

list of offences punishable under the section, 1287-1290.

penalty on drunken persons, etc., guilty of riotous and indecent behaviour, 1290.

penalty for accidentally allowing chimneys to catch fire, *ib.*

fire-engines and firemen may be provided by the commissioners, *ib.*

fire police permitted to go beyond the limits of the Act in certain cases, *ib.*

penalty on victuallers harbouring constables while on duty, 1291.

penalty on coffee-shop keepers harbouring disorderly persons, *ib.*

penalty on persons keeping places for bear-baiting, cock-fighting, etc., *ib.*

hackney carriages to be licensed, *ib.*

what to be hackney carriages, *ib.*

fee to be paid for licence, *ib.*

persons applying for licence to sign requisition, *ib.*

what specified in licences, 1292.

licences to be registered, *ib.*

licence in force for one year only, *ib.*

notice by proprietor of change of abode, *ib.*

penalty for plying for hire without licence, *ib.*

drivers not to act without licence, 1293.

penalty for so doing, *ib.*

proprietor to retain driver's licence, and to produce it when summoned, *ib.*

justices may endorse convictions on licences, *ib.*

penalty on proprietors for neglect, *ib.*

proprietor to return licence to driver on quitting service, *ib.*

except in cases of misconduct, *ib.*

compensation in case of licence being improperly withheld, *ib.*

licences suspended or revoked for misconduct, *ib.*

number of persons carried to be painted on hackney carriage, 1294.

penalty for neglect or refusal to carry such number, *ib.*

POLICE (TOWNS)—*continued.*

penalty for refusal to drive, 1294.
 for demanding more than the sum agreed upon though less than legal fare, *ib.*
 agreement to pay more than fare not binding, and sum paid beyond recovered back, *ib.*
 driver to carry under an agreement for discretionary distance, the distance to which hirer is entitled for the fare, *ib.*
 deposit to be made for carriages waiting, 1295.
 penalty on driver refusing to wait, or to account for deposit, *ib.*
 overcharge by hackney coachmen, etc., to be included in conviction, and returned to aggrieved party, *ib.*
 penalty for permitting persons to ride without consent of hirer, *ib.*
 no person to act as driver without consent of proprietor, *ib.*
 penalty on drivers misbehaving, *ib.*
 penalty for leaving carriages unattended at places of public resort, *ib.*
 damages recovered from proprietor, 1296.
 improperly standing with carriage, *ib.*
 refusing to give way to or obstructing any other driver, *ib.*
 or depriving him of his fare, *ib.*
 justices to award compensation to drivers for loss of time in attending to answer complaints not substantiated, *ib.*
 penalty for refusing to pay the fare, *ib.*
 penalty for damaging carriage, *ib.*
 commissioners may make bye-laws, *ib.*
 bathing places, 1297.
 rates, *ib.*
 tender of amends, *ib.*
 damages, *ib.*
 one justice may act, *ib.*
 inspection of Act, *ib.*

POLL-BOOK. See PARLIAMENT, 1155.

POLLING. See PARLIAMENT, 1153.

PONDS.

injuries to, 783.

POST OFFICE.

The 7 Will. 4 & 1 Vict. c. 36, 1297.
 contravening privilege of post office, 1298.
 ship letters retained after delivering of letters to post office, *ib.*
 penalty on abuse of privilege as to newspapers, 1299.
 penalties on masters of ships not taking letter bags, *ib.*
 persons engaged or employed in carrying, conveying, or delivering bags or mails of letters, etc., *ib.*
 guilty of carelessness, negligence, or misconduct, 1300.
 punishable on summary conviction before a justice, *ib.*
 no hackney carriage to ply for hire oppo-

POST OFFICE—*continued.*

site General Post Office in London or Dublin, 1300.
 definition of hackney carriage within meaning of Act, *ib.*
 no hawk, news-vendor, etc., to stop or loiter on pavement, *ib.*
 penalty on collectors of tolls, ferrymen, or keepers of gates, etc., demanding toll on mail coach, or stopping mail, *ib.*
 abettors in offences punishable on summary conviction, *ib.*
 in what courts pecuniary penalties may be sued for, 1301.
 mode of proceeding before justices for offences, *ib.*
 appeal, *ib.*
 justices may mitigate penalties, 1302.
 application of penalties, *ib.*
 justices shall receive the crown's share of penalties, and pay same to clerk of peace, to be remitted to post office, *ib.*
 penalty on justice or clerk of peace for omitting so to do, *ib.*
 justices empowered to award costs to defendants where informations or complaints are withdrawn or dismissed in certain cases, 1303.
 what shall be deemed service of a justice's summons, *ib.*
 penalty for neglecting to serve a summons, etc., *ib.*
 penalty on witnesses neglecting to attend, *ib.*
 or refusing to give evidence, *ib.*
 officers of post office not disqualified from being witnesses, *ib.*
 in what manner goods distrained under this Act shall be sold, 1304.
 postmaster-general may compound actions, etc., *ib.*
 penalties to be sued for within a year, *ib.*
 opening or delaying post letters, *ib.*
 who a person in employ of post office, *ib.*
 inspection of letters by government, 1305.
 liability of post-master for loss, etc., of letters, 1306.
 embezzling or stealing letter or packet, *ib.*
 stealing money, etc., out of letters, 1307.
 stealing letters, etc., sent by the mail, 1308.
 stealing letters, etc., sent by a post office packet, *ib.*
 receivers of property sent by post, and stolen or embezzled, *ib.*
 fraudulently retaining, after delivery thereof by mistake, letters or packets, and wilfully secreting or detaining letters, etc., that have been lost, 1309.
 stealing, etc., any printed votes or proceedings in Parliament, newspaper or other printed paper, *ib.*
 forging handwriting of receiver-general, *ib.*

POST OFFICE—*continued.*

franking, 1309.
 principal in second degree, and accessories, *ib.*
 how to be punished, *ib.*
 endeavouring to procure commission of any felony or misdemeanour, 1310.
 venue in indictments, etc., *ib.*
 accessories in felony, *ib.*
 and persons aiding and counselling in, *ib.*
 admiralty jurisdiction, *ib.*
 property sent by post to be laid in post-master-general, 1311.
 statement of value, *ib.*
 nature of employment, *ib.*
 punishment, *ib.*
 power to award hard labour or solitary confinement, *ib.*
 distress for recovery of sums not exceeding £20, *ib.*
 in what way duties of postage may be sued for, 1312.
 forms of conviction, etc., *ib.*
 mode of proceeding in actions, *ib.*
 interpretation clause, 1313.
 where provisions of Act shall extend to, 1315.
 forging or fraudulently using dies or plates, *ib.*
 for punishing evasion of duties, 1316.
 punishing persons manufacturing or using paper same as that used for postage covers, *ib.*
 receiving or having in possession paper provided for postage covers or stamps, before being stamped and issued for use, 1317.
 postage marked on foreign letters to be evidence of amount of postage, *ib.*
 certain penalties under 7 Will. 4 & 1 Vict. c. 34 and c. 36, further extended, 1318.
 examination of printed papers, etc., *ib.*
 combustibles not to be sent by post, *ib.*
 for prosecution of offences, 1319.
 postmaster-general to be a body corporate, *ib.*
 schedule to the 1 Vict. c. 46, *ib.*
 information for recovery of a penalty, *ib.*
 summons on foregoing information, 1320.
 conviction on foregoing information, *ib.*
 warrant of distress founded on foregoing conviction, *ib.*
 warrant of commitment for want of sufficient distress founded on foregoing conviction, 1321.
 complaint whereon to found warrant of distress for recovery of postage, *ib.*
 summons on foregoing complaint, *ib.*
 warrant of distress founded on foregoing complaint, 1322.
 warrant of commitment for want of sufficient distress, founded on foregoing complaint, *ib.*

PRESENTMENT.

by grand jury, 1323.
 form of presentment, *ib.*
 by constables, etc., *ib.*
 of highways, *ib.*
 presentment by a grand jury, *ib.*

PRESUMPTIONS OF LAW, 13.

PRETENCES. See LARCENY, 274.

PRINTERS.

printing and publishing of newspapers, pamphlets, and periodicals. See NEWSPAPERS.
 as to libels, see LIBEL.
The 39 Geo. 3, c. 79, 1324.
 printers to give notice to clerk of peace, who is to grant certificate, and file notice, and transmit copy to secretary of state, *ib.*
 penalty for keeping presses, etc., without notice, or using them in any place not expressed therein, *ib.*
 not to extend to king's printers, or universities, 1325.
 letter-founders and printing-press makers to give notice to clerk of peace, *ib.*
 who shall grant certificate, file notice, and transmit a copy to Secretary of State, *ib.*
 penalty for carrying on such businesses without notice, *ib.*
 account to be kept of types and printing-presses sold, *ib.*
 and to be produced when required, *ib.*
 not to extend to papers printed by authority of Parliament, *ib.*
 printers shall keep a copy of every paper they print, and write thereon name and abode of employer, *ib.*
 penalty for neglect, or refusing to produce copy within six months, *ib.*
 persons selling, etc., paper without name and abode of printer, *ib.*
 may be taken before justice, to determine whether they have offended against Act, 1326.
 not to extend to impressions of engravings, or printing names and addresses, etc., *ib.*
 nor to alter any provisions respecting newspapers, *ib.*
 a justice may empower a peace officer to search for presses and types he suspects to be illegally used, *ib.*
 who may seize them and printed papers found, *ib.*
 prosecutions to be commenced within six months, *ib.*
 recovery of penalties, *ib.*
 application of penalties, 1327.
 limitation of actions, *ib.*
 venue, *ib.*
 general issue, *ib.*

FOLLOWING
PAGE IS
DAMAGED

BEST IMAGE
AVAILABLE

PRINTERS—*continued.*

double costs, 1328.
 form of convictions, etc., *ib.*
The 51 Geo. 3, c. 65, ib.
 printing papers or books contrary to 39
Geo. 3, c. 79, ib.
 justices may mitigate penalties, *ib.*
 name and residence of printers not re-
 quired to be put to bank notes, bills,
 etc., *ib.*
 or to any paper printed by authority of
 any public board or public office, *ib.*
 appeal, 1329.
The 2 & 3 Vict. c. 12, ib.
 penalty on printers for not printing their
 name and residence on every paper or
 book, *ib.*
 and on persons publishing same, *ib.*
 as to books or papers printed at univer-
 sity presses, *ib.*
 actions for penalties under Act to be com-
 menced in name of attorney or solicitor-
 general, etc., 1330.
 persons sued before the passing of this
 Act for penalties incurred under re-
 cited Act may apply to stay proceed-
 ings upon certain conditions, *ib.*
 former Acts and this to be construed as
 one, 1331.
 conviction of having or using a printing-
 press, *ib.*
 or types for printing without notice, *ib.*
 or using the same in a place not specified
 in such notice, *ib.*
 or not keeping accounts as required by
 Act, *ib.*
 or any other offence against Act, *ib.*
 notice to clerk of peace that any person
 keeps any printing-press, or types for
 printing, *ib.*
 certificate that notice has been given of
 printing-press, or types for printing, *ib.*
 notice to clerk of peace, that any person
 carries on business of letter-founder,
 1332.
 or maker or seller of types for printing or
 printing-presses, *ib.*
 certificate that above notice has been
 given, *ib.*

PRISON BREAKING.

offences of, at common law, 1332.
 by statute, *ib.*
 prison broken by a stranger, *ib.*
 what shall be deemed a prison, *ib.*
 must be an actual breaking, *ib.*
 and an escape, 1333.
 how punishable, *ib.*
 party must be lawfully in prison, *ib.*
 imprisonment, what, *ib.*
 for what, *ib.*
 suspicion, etc., 1334.
 voluntary or negligent gaoler, *ib.*
 assaults on peace officers, *ib.*
 commitment for prison-breaking, 1335.

PRISON BREAKING—*continued.*

indictment for, by escaping from
 prison, 1335.
 indictment for breaking out of gaol

PRIZE-MONEY. See MILITARY I.

PROCESS.

what, 1335.
 process against jurors. See JURORS.

*Process after Indictment, and re-
 Appearance in Courts of Record.*

I. To compel an Appearance.

process by commission, 1336.
 process or indictments taken in the
ib.
 process by justices out of sessions,
 process, what, *ib.*
 no need of, if party be present, *ib.*
 to be in queen's name, *ib.*
 when returnable, *ib.*
 process for felony, *ib.*
 process for misdemeanours, etc., 1
 person charged with offence (not
 or felony) for which he may be
 indicted by indictment or informers
 King's Bench; a judge may
 warrant to apprehend him, *ib.*
 who shall be thereupon held to
 answer the charge, or on failure
 shall be committed, *ib.*
 if any person in custody for want
 shall not plead in eight days after
 of indictment, etc., prosecutor may
 enter plea of not guilty and pro-
 trial, *ib.*
 party acquitted may be discharged,
 bench warrants, *ib.*

II. Of Outlawry for Non-Appearing.

process of outlawry, 1338.
 meaning of word outlaw, *ib.*
 a woman outlawed, *ib.*
 infant, *ib.*
 for what outlawry may be, 1339.
 proclamation of outlawry at session
ib.
 return of outlawry, *ib.*
capias utlagatum, ib.
 consequences of outlawry, *ib.*
 for treason or felony, 1340.
 for an inferior offence, *ib.*
 goods forfeited from time of issu-
 ing, *ib.*
 lands forfeited from time of outlawry
 but outlawry must be first return-
 and after inquisition found, *ib.*
 whether it is lawful to kill an out-
 lawed person, 1340.
 justices of assize may award execution
 persons outlawed before justice
 person outlawed cannot be a plan-
 cannot be a juror, *ib.*
 may be a witness, 1341.
 may make a will, *ib.*
 reversing outlawry, *ib.*

FOLLOWING
PAGE IS
DAMAGED

BEST IMAGE
AVAILABLE

*sed*SS—continued.

Outlawry for Non-Appearance—cont.
what case party must appear personally to reverse it, 1341.

Forms as to.

ire, 1341.

ingas, *ib.*

ias, 1342.

as capias, *ib.*

feries capias, *ib.*

orjent, *ib.*

ias utlagatum, 1343.

ANENESS. See LIBEL.

th ISSORY NOTES.

omissory notes for less than 20s. void, 1343.

alty on persons uttering such notes, ib.
stices may determine on such offences within twenty days, ib.

alty on witnesses not attending, ib.

m of conviction, 1344.

urnable to sessions, ib.

opies of convictions, ib.

covery and application of penalties, ib.

m of warrant of distress, ib.

urity for appearance of party, on return of such warrants, 1345.

enders may be committed for want of distress, ib.

irishioners may be witnesses, ib.

nctions not removable by certiorari, ib.

mitation of actions, ib.

nue, ib.

able costs, 1346.

ECUTOR. See INDICTMENT.

ISO, IN A STATUTE.

statement of, in an indictment, 30.

ICATION OF LIBEL, 338.

SHMENT. See MISDEMEANOUR, PENAL SERVITUDE; and see in general, JUDGMENT.

HING INDICTMENTS, etc. See INDICTMENT, INFORMATION.

aling from, 254.

SO UM.

eaning of, 132.

N ITS. See LARCENY, 233.

tl See LARCENY, 241, and see MALICIOUS INJURIES TO PROPERTY, 780.

VERS OF STOLEN GOODS, etc. See LARCENY.

RDS.

aling, etc., of. See LARCENY, 239.

RECOVERY OF TENEMENTS. See LANDLORD AND TENANT, 191.

REGISTERS. See MARRIAGE.

RENT.

distress for. See LANDLORD AND TENANT.

RESCUE.

as to prison-breaking, see PRISON-BREAKING.

RESTITUTION OF STOLEN GOODS, or goods obtained under false pretences, 284.

RETURNING FROM PENAL SERVITUDE. See PENAL SERVITUDE.

REWARDS.

offence of taking rewards to help to stolen goods, 287.

RIOT. See MALICIOUS INJURIES TO PROPERTY.

RIVERS AND NAVIGATION.

destroying, etc., banks, locks, etc., of rivers, 782.

stealing from vessels, 254.

ROBBERY. See LARCENY.

SABBATH. See LORD'S DAY.

SACRILEGE. See LARCENY and MALICIOUS INJURIES TO PROPERTY.

SCOLD.

common scold a nuisance. See NUISANCE.

SCOTLAND.

trial of offences in, 21.

SEA.

destroying sea-banks, 782.

SEARCH-WARRANT.

under the "Larceny Act," 287. See also JUSTICES OF THE PEACE.

SECURITIES.

stealing of, 236.

SEDITIONOUS MEETINGS, etc. See LIBEL.

SERVANTS.

employment of females and children in mines. See MINES.

larceny and embezzlements by, 256.

SEWERS. See LOCAL GOVERNMENT.

SHEEP.

sheep-stealing, 230.

SHERIFF.

duties of with respect to parliamentary elections. See PARLIAMENT.

SHIPS.

stealing from ships, 254.

plundering wrecks, etc. See LARCENY.

piracy. See PIRACY.

offences tending to the loss of vessels, etc.

FOLLOWING
PAGE IS
DAMAGED

BEST IMAGE
AVAILABLE

SHIPS—*continued*.

See MALICIOUS INJURIES TO PROPERTY.
 exhibiting false lights, and plundering wrecks, etc. See LARCENY and MALICIOUS INJURIES TO PROPERTY.
 burning or destroying ships. See MALICIOUS INJURIES TO PROPERTY.

SHOOTING. See MALICIOUS INJURIES TO PERSONS.

SHOPS.

breaking into, etc. See LARCENY.
 setting fire to. See MALICIOUS INJURIES.

SHRUBS.

stealing. See LARCENY.
 destroying. See MALICIOUS INJURIES TO PROPERTY.

SILKS.

malicious injuries to silks and manufactures, 775.
 stealing from silk manufactories, 254.

SIMPLE LARCENY. See LARCENY.

SLANDER. See LIBEL.

SOLDIERS. See MILITARY LAW.

STABBING. See MALICIOUS INJURIES TO PERSONS.

STANDING MUTE. See MUTE.

STATIONERS. See NEWSPAPERS, PRINTERS.

STATUTES.
 statement of, in indictments, 29.

STEALING. See LARCENY.

STEAM-ENGINE.

maliciously injuring, 775.
 nuisance from, 1030.

STOCKING-FRAMES.

damaging of, 776.

SUBORNATION OF PERJURY. See PERJURY.

SUNDAY. See LORD'S DAY.

SUPREMACY, OATH OF. See OFFICE.

SURGEONS. See MEDICAL PRACTITIONERS.

SURPLUSAGE.
 what is, 14.

SWANS.

larceny of, 217.

SWEARING.

as to oaths, see OATHS.
 as to blasphemy, see LIBEL.

TECHNICAL WORDS.

statement of, in indictment, 33.

TENANTS. See LANDLORD AND TENANT.
 larceny by, 264.

TENDER OF AMENDS. See AMENDS.
 170.

THEATRE. See PLAYERS AND THEATRE.
 HOUSES.

THEFT. See LARCENY.

THREATS.

obtaining money, etc., by threats, 245.
 threatening letters to burn property. See MALICIOUS INJURIES TO PROPERTY, 790.

THRESHING MACHINES.
 injuries to, 776.

TIME.

statement of, in indictment, 28.

TIN.

malicious injuries to mines, 780.

TITLE-DEEDS.

stealing of, 236.

TORN. See LEET.

TOWNSHIP.

statement of, in indictment, 26.
 statement of property in, 32.

TRADE.

injuries to manufactures, etc. See MALICIOUS INJURIES TO PROPERTY.
 setting fire to buildings used for trade. See MALICIOUS INJURIES TO PROPERTY.

TRANSPORTATION. See PENAL CODE.

TREES.

injuries to, 775.
 stealing of, 240, 241.

TRIAL. See NEW TRIAL, 1011.

UNKNOWN PERSON.

statement of, in indictment, etc.,

VACANT POSSESSION. See LANDLORD AND TENANT.

VALUE.

statement of, in an indictment, 3

VARIANCE.

in statements in indictments, 10

VEGETABLES.

stealing of, 242.
 injuries to, 776.

VENIRE. See PROCESS.

VENTRE INSPICIENDO, 71.

FOLLOWING
PAGE IS
DAMAGED

BEST IMAGE
AVAILABLE

Indictments, 17.

JT. See JURORS.

ES. See LOCAL GOVERNMENT.

JURY ON, 81.

TEER CORPS. See MILITARY LAW.

ie of offences in, 20.

ANT. See JUSTICES.

the payment of money, etc., stealing of, 236.

F.
ling from, 254.
ing damage to, 782.

See LARCENY, for larceny by, etc.

ling and destroying of, 254.

WOMEN.

employment of, in mines and collieries, etc. See MINES.

WOOD.

maliciously destroying wood, etc., 775.
stealing of wood, etc., 240.

WOOLLEN MANUFACTURE.

stealing of in course of manufacture, 254.
destroying, etc., 775.

WORDS. See LIBEL.

WORSHIP. See LORD'S DAY.

WRECK.

stealing from, etc., 255. See LARCENY.
destroying, etc., 790. See MALICIOUS INJURIES TO PROPERTY.

WRITINGS.

how stated in indictment, 31.
stealing of, 236.

